

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10243-MLW

4  
5 UNITED STATES OF AMERICA

6  
7 vs.

8  
9 RYAN HARRIS

10  
11 \*\*\*\*\*

12  
13 For Jury Trial Before:  
14 Chief Judge Mark L. Wolf

15  
16 United States District Court  
17 District of Massachusetts (Boston.)  
18 One Courthouse Way  
19 Boston, Massachusetts 02210  
20 Monday, February 27, 2012

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24 Official Court Reporter  
25 United States District Court  
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1 P R O C E E D I N G S

2 (Begins 9:00 a.m.)

3 THE CLERK: Criminal matter 09-10243, the  
4 United States of America versus Ryan Harris. The Court  
5 is in session. You may be seated.

6 THE COURT: Good morning. Would counsel  
7 please identify themselves for the record.

8 MR. BOOKBINDER: Good morning, your Honor.  
9 Adam Bookbinder and Mona Sedky for the United States.

10 MR. MCGINTY: Your Honor, Charles McGinty and  
11 Christine Demaso for Ryan Harris. Mr. Harris is here at  
12 counsel table, your Honor.

13 THE COURT: All right.

14 Since we recessed Friday, I have received the  
15 government's revised exhibits, 3 and 22, the defendant's  
16 supplemental motion in limine regarding Exhibit 3, the  
17 statement that the defendant does not intend to testify,  
18 and filed last evening, the defendant's objections to  
19 the testimony by Special Agent Jason Ryan, and to  
20 Exhibit 25.

21 Is there anything else I should have received and  
22 read?

23 MR. MCGINTY: There is not, your Honor.

24 MR. BOOKBINDER: No.

25 THE COURT: All right. The jurors are all

1 here. I want to finish Mr. Larosa and get through  
2 Mr. Hanshaw before, as I say, having further substantial  
3 -- that there needs to be substantial discussion  
4 concerning Special Agent Russell's testimony, which I  
5 think is substantially addressed in the motions in  
6 limine, and that implicates the chats from Mr. T and  
7 MooreR, is that correct?

8 MR. BOOKBINDER: Yes, your Honor.

9 THE COURT: And there may be some other  
10 exhibits.

11 And then I thought the issues were the same with  
12 regard to Mr. Ryan and I actually perhaps  
13 misunderstood. I had asked whether there were problems  
14 with the summaries and maybe there were not problems  
15 with regard to their accuracy, but there are other  
16 issues. But I'm inclined to take those up, as I said,  
17 after we hear from Mr. Hanshaw. We can either have the  
18 jury wait or conceivably send them home for the day and  
19 finish the testimony tomorrow, if we're going to be a  
20 while on the evidentiary issues and aren't going to  
21 finish today, in any event.

22 Well, Mr. McGinty, what's the -- I've read it, but  
23 what's the essence of the problem from the defendant's  
24 perspective with regard to Ryan?

25 MR. MCGINTY: Your Honor, the government had,

1 in an exhibit, which is Number 25 appended to the  
2 motion, it listed a number of calculations, total  
3 revenue, total customers, um, they list the total  
4 payments to Phillips and total payments to Lindquist,  
5 which are already in evidence and are not in dispute  
6 here, and then they had a figure of total retained by  
7 Harris for personal use.

8 The total revenue figure is not probative of any  
9 issue in the case except whether Harris was running a  
10 for-profit business. The government already has, even  
11 though we didn't view it as relevant, um, they already  
12 have a stipulation to a PayPal record which lists as  
13 revenues through PayPal alone the sum of about  
14 \$776,000. And the reason we stipulated to that and it  
15 didn't get in the way, so to speak, is something that we  
16 thought the government didn't need to have as part of  
17 its case, is that we're not going to be standing in the  
18 way of a simple, in effect, gesture that, yes, this was  
19 a for-profit business. So we stipulated to that.

20 What the government wants to put in beyond that  
21 is, um, a calculation of revenues based in part on  
22 GoDaddy records which have not been the subject of a  
23 stipulation. They want to reach a figure relating to  
24 Harris' personal profit from this. Um, it's one thing  
25 to say it's a for-profit business, but it's another

1 thing to calculate what his perceived benefit of that  
2 would be. Um, the government --

3 THE COURT: Well, when I looked at this I  
4 assumed that this starts with total revenue and the only  
5 expenses are payments to Phillips and Lindquist and  
6 whoever did the chart must have been taking out some  
7 other unidentified expenses.

8 MR. MCGINTY: I think that's right and that's  
9 -- see, in terms of what the government wants, the  
10 government wants it's for-profit, it's got that, it  
11 wants to get in the number of customers. Um, Harris, in  
12 his book, has said that he has an excess of 15,000  
13 customers. So that's in as well. So the revenues of  
14 the business generally, the scope of the business  
15 already in. Um, this chalk has a way of --

16 THE COURT: It's not a chalk. They want it as  
17 an exhibit.

18 MR. MCGINTY: Well, they want it as an  
19 exhibit. We had objected to it. This summary does not  
20 fairly address any issue that's in dispute here and  
21 creates a misimpression --

22 THE COURT: Well, but they -- they don't have  
23 to -- I mean, even if you stipulated to some of these  
24 things, under **Old Chief** and its progeny, they can offer  
25 some evidence of it. And I thought that personal profit

1 to Mr. Harris would be relevant on the conspiracy charge  
2 that's showing he has a stake in the enterprise, the  
3 **Falcone** concept, and in the scheme to defraud he's got a  
4 motive to engage in the scheme, he wants to be rich,  
5 and, um, is making money.

6 So I don't -- I -- at the moment, I want to hear  
7 from the government and then we'll come back to it, but,  
8 um, I don't think it's irrelevant and I don't think that  
9 if the chart were otherwise admissible, Rule 403 would  
10 operate to exclude it. But there does seem to be a  
11 missing number there or a business-expense-type thing.  
12 But, here, let me hear from Ms. Sedky.

13 MS. SEDKY: Thank you. Um, we were planning  
14 on eliciting testimony from Special Agent Ryan about the  
15 types of business expenses that he extracted from the  
16 total revenue number to get to the monies that were  
17 retained by Mr. Harris. Our position is that the PayPal  
18 document is not a substitute for the \$1.1 million  
19 revenue figure, that PayPal pay period is over a 10-year  
20 period, whereas Mr. Ryan's analysis is over a 5-year  
21 period and it shows \$1.1 million in revenue.

22 THE COURT: What five years?

23 MS. SEDKY: It's '05 to '09, which paints a  
24 dramatically different picture about the scope of this  
25 enterprise. So that's the total revenue that the



1 GoDaddy -- I'm sorry, the PayPal number is not a  
2 substitute, it does not accurately reflect how big this  
3 enterprise was.

4 THE COURT: And if the summary comes in --  
5 well, the argument is that the GoDaddy records aren't  
6 authenticated. How do you respond to that?

7 MS. SEDKY: The only number in the chart that  
8 relies, in part, on the GoDaddy numbers is the 10,000  
9 user figure. We are happy to substitute that with a  
10 15,000 user figure and use the defendant's own  
11 admissions for that, if that's --

12 THE COURT: Well, no, I pointed this out to  
13 you before. You can't summarize testimony in a charge  
14 if you want it as an exhibit. Remember when I told you  
15 about **Muffleman** and the difference between the chalk  
16 that can be shown to the jury and a summary that has to  
17 summarize documents. I didn't think I needed to refresh  
18 myself on this, and I will before I rule on it today,  
19 but if this is going to be a chart, then it has to  
20 summarize a set of -- well, if it's going to be admitted  
21 as an exhibit and not just be used to illustrate  
22 testimony, it's going to be admitted under Rule 901, and  
23 not just be an educational device, then there would have  
24 to be voluminous records and this has to summarize  
25 them. If you're conflating testimony or something

1     that's in a book with something that's, you know, found  
2     in the voluminous records, then I'm not going to admit  
3     it.

4             MS. SEDKY: Well, Mr. Ryan will testify that  
5     he has seen on the website, there's a posting on the  
6     TCNISO website, it's Exhibit 2, Page 13, and it's -- on  
7     the website Mr. Harris says, "We have had over 15,000  
8     orders as of May of 2008."

9             THE COURT: That's fine. It can go on a  
10    chalk, perhaps. It's not something that, on the First  
11    Circuit precedent that I brought to your attention weeks  
12    ago, um, is properly part of the summary.

13            MS. SEDKY: In terms of the number of  
14    customers, Mr. Ryan will also be able to testify that  
15    the PayPal records, um, what happened was in basically  
16    '07 to '09, that's the only time period where GoDaddy  
17    came into the picture. The PayPal records themselves  
18    can also substantiate that there were thousands of  
19    customers. But we can leave out the 10,000, we can  
20    redact it before the jury sees it, without a problem.

21            THE COURT: So you say other than the number  
22    of customers, all of this, is it from the GoDaddy  
23    records?

24            MS. SEDKY: Yeah, the agent will testify that  
25    in the way he calculated this was the primary bank

1 account that the defendant used was Washington Mutual  
2 and PayPal he used as what was de facto another bank  
3 account, a checking account. So the money in gets  
4 calculated through a combination of the PayPal account,  
5 of which you saw the \$775,000 as an example, and  
6 Washington Mutual. There were essentially -- he'll  
7 testify that there were two ways that people could buy  
8 products, they could use credit cards or they could pay  
9 through PayPal. So if they paid through PayPal, the  
10 PayPal records showed the revenues. If they paid by  
11 credit card, there were merchant account transfers into  
12 the Washington Mutual account that were the credit card  
13 purchases. So he doesn't rely on GoDaddy to come up  
14 with the \$1.1 million.

15 THE COURT: Well, when I -- I pointed out to  
16 you weeks ago, well before trial, the distinction and  
17 interaction between Rules of Evidence 1006 and 611, what  
18 can go in as a summary and what can go in as a chalk --  
19 it gets a letter, but doesn't go in the jury room.

20 Did you read the cases I brought to your  
21 attention?

22 MS. SEDKY: We did. But I have to confess, I  
23 don't have them off the top of my head, but there were  
24 two of them.

25 THE COURT: Well, when I rule on this I'm

1 going to analyze it in the context of that  
2 jurisprudence, and probably **Milkowicz** --

3 MS. SEDKY: Well, your Honor --

4 THE COURT: Can I finish? -- most  
5 prominently, but at the moment I don't think these  
6 figures are irrelevant, um, but I'm skeptical about  
7 whether they'll go in as an exhibit as opposed to a way  
8 of illustrating the testimony during the trial. We'll  
9 talk about it more further.

10 MS. SEDKY: Your Honor, we'll offer them as a  
11 chalk, just to simplify matters.

12 THE COURT: Okay, that simplifies it.

13 And, Mr. McGinty?

14 MR. MCGINTY: Um, the stipulations here are  
15 important. We did not stipulate to the PayPal records.  
16 We did not stipulate to the GoDaddy records. The  
17 stipulations are to a PayPal account summary for Harris,  
18 which is reflected in the documents here, it's a single  
19 page. We did not stipulate to the authenticity of the  
20 GoDaddy records. Now, what the agent presumably does is  
21 he culls from the GoDaddy records, the record purchases,  
22 he presumably culls from the PayPal records the sum of  
23 the activity. Um, he has to go to the Washington Mutual  
24 records, which, by the way, were not stipulated to. The  
25 Washington Mutual Bank account agreement is stipulated

1 to, the content of the records is not, for the precise  
2 reason that we took the position that this was  
3 irrelevant, and frankly we maintain that it's  
4 irrelevant. Um, whether Harris garners profit from this  
5 or not, it was a for-profit endeavor, um, and if that's  
6 the predicate that's relevant here, they have that  
7 predicate. But if what they're trying to do is build a  
8 house where the foundation is necessarily a stipulation  
9 or a witness, they have neither.

10 THE COURT: Well, as I said, I had asked you  
11 repeatedly whether there's any problem with the  
12 summaries and I wasn't alerted to this one previously,  
13 so we're going to finish Mr. Hanshaw and come back to  
14 this. But the question -- and this is helpful and it  
15 comes into sharper focus, is does the government have to  
16 show that this is a summary of admissible documents, and  
17 if it's just for the purpose actually of Rule 611, then  
18 they might not need these records. But if the documents  
19 are not admissible, they're not admitted, then it's hard  
20 for the defendant to challenge them and particularly for  
21 the jury to decide if the testimony is reliable.

22 (Pause.)

23 THE COURT: And, again, this is something of a  
24 preview of what we'll discuss further after Hanshaw, um,  
25 but are the objections to Agent Ryan's -- I'm sorry,

1 Agent Russell's testimony -- well, they include the  
2 Mr. T and MooreR chats, right, and that's part of what  
3 you want to get in through Mr. Russell?

4 MR. BOOKBINDER: Yes, your Honor.

5 THE COURT: All right.

6 Have I heard any testimony regarding Mr. T or  
7 MooreR yet? I thought I was going to hear some  
8 testimony, for example, that, Mr. T, you know, was a  
9 friend of Mr. Harris's, but at the moment I don't recall  
10 whether that was presented.

11 MR. BOOKBINDER: I believe where we left last  
12 on these motions in limine, well, I think what we had  
13 told the Court was that after speaking to our witnesses  
14 in preparation, we didn't expect that there was going to  
15 be testimony that was going to be terribly helpful and  
16 that what we're relying on was Mr. -- to the extent --  
17 and I think it's, I guess, probably MooreR, and I'd have  
18 to look, where we are trying to get in his statements,  
19 and not just Mr. Harris's statements, but what we were  
20 relying on to show that MooreR was a co-conspirator, for  
21 example, was the things that Mr. Harris said to him in  
22 those chats and that was what we were relying on and  
23 that we were not going to get testimony at trial that  
24 was helpful of this and that turned out to be the case.

25 THE COURT: All right. Well, I'll refresh

1       myself on that. I did think that Mr. Harris's -- well,  
2       and the other general principle is I can rely on  
3       information that has not been presented to the jury, A,  
4       and, B, it doesn't even have to be admissible, as long  
5       as it's not privileged, in making admissibility  
6       determinations. So we'll come back to this, too.

7               Are there forum posts implicated with  
8       Mr. Russell?

9               MR. BOOKBINDER: There are. There are  
10       relatively few of them left and I'm guessing that we can  
11       move -- and there will generally be -- the Court will  
12       rule on them categorically, so I don't think it's going  
13       to take a lot more time, we've gone through these in  
14       depth, but we will need to look at them again, I think.

15              THE COURT: All right. We'll do that after  
16       Hanshaw.

17              And I actually, as I was working on this over the  
18       weekend, I don't have the whole book that Mr. Harris  
19       wrote, I just have the excerpts. And one of the things  
20       that I'm going to have to focus on is what evidence  
21       there is that is necessary to get -- to trading MACs, to  
22       get them from outside somebody's own neighborhood. Is  
23       there anything in the book about that?

24              MR. BOOKBINDER: No, your Honor. The book  
25       focuses on uncapping, not on MAC trading and outright

1 theft of service.

2 To the extent the Court would like it, we'll leave  
3 the original book here, which we'll use as the original  
4 exhibit, and we can certainly pass that up.

5 THE COURT: Well, for present purposes I think  
6 that's sufficient.

7 (Pause.)

8 THE COURT: All right. Well, I continue to be  
9 skeptical about the admissibility of posts, but we can  
10 discuss that later. I'm still inclined to conditionally  
11 admit the chats.

12 All right. When we left off -- oh, excuse me.  
13 When we left off on Friday, um, we were dealing with an  
14 issue of two driver's licenses with Mr. Larosa's  
15 picture, right?

16 MR. MCGINTY: That's exactly right, your  
17 Honor.

18 THE COURT: What's the relevance of the  
19 licenses?

20 MR. MCGINTY: The relevance is his identity.  
21 Um, one of them is an application for a Mass. ID that --

22 THE COURT: Here, do you have copies for me?

23 MR. MCGINTY: I do. I have the exhibits  
24 here.

25 (Passes up.)



1 MR. MCGINTY: These are B and F. These are  
2 the originals. They're marked for identification.

3 THE COURT: All right.

4 One is "Jose L. Larosa," the other has the name  
5 "Jose Dellarosa," and they have slightly different  
6 Social Security numbers, correct?

7 MR. MCGINTY: That's precisely right.

8 THE COURT: All right. So what's the  
9 relevance?

10 MR. MCGINTY: The relevance is to his  
11 identity.

12 THE COURT: Well -- are you seeking to admit  
13 the two documents?

14 MR. MCGINTY: I am.

15 THE COURT: And what rule authorizes that?

16 MR. MCGINTY: These are, um -- under 803, your  
17 Honor, these are records that are public records. These  
18 are records of matters observed personally by the duties  
19 imposed by law, 8038.

20 THE COURT: I'm not sure. I'm skeptical about  
21 whether that's right. But you may have another basis  
22 for getting them in, um, subject to Rule 403.

23 But what's the government's say?

24 MS. SEDKY: Your Honor, we object to this  
25 whole line of questioning and certainly the

1       admissibility of extrinsic evidence.

2               Mr. Dellarosa, or Mr. Larosa, has been using a  
3       slightly more, I think, perhaps Hispanic or ethnic  
4       version of the same name. It is not an alias. It is  
5       not uncommon for someone, who has moved here from  
6       another country, to slightly change their name from  
7       "Dellarosa" to "Larosa." And to the extent that there  
8       is a difference in the Social Security numbers, it  
9       appears to be one number which has been transposed,  
10      perhaps accidentally. So we think this is not probative  
11      of Mr. Larosa's veracity or truthfulness.

12             And in terms of getting in those two documents per  
13      under 8033, these are not certified, we have not  
14      stipulated to the authenticity of the documents, there  
15      has been no foundation laid that they were obtained by a  
16      government agency, and, um, we object to the use of the  
17      questions and the documents themselves.

18             THE COURT: Well, let's talk this through just  
19      a bit. One, when you say you want to know who he is,  
20      and I think Ms. Sedky is right that these are  
21      essentially two versions of the same name, um, do you  
22      want these in to challenge his credibility? What's the  
23      relevance? You want to know who he is. Why do you want  
24      to know who he is?

25             MR. MCGINTY: Well, I think that when a person

1 raises their right hand and affirms who they are in his  
2 testimony, um, and if there's an issue of his identity,  
3 your Honor, then we would move to strike his testimony.

4 THE COURT: Well, I doubt I would do that.  
5 Um, here's, I think, the proper analytical framework,  
6 although I will say I didn't focus on 8033 -- um, but  
7 under 8038, the set of requirements. Um, one, if this  
8 was only to challenge Larosa's credibility under Rule  
9 608(b), then no extrinsic evidence would be permissible,  
10 both licenses, E and F, would not go into evidence.  
11 However, if it's for some other purpose, extrinsic  
12 evidence is permitted subject to Rule 403. There's  
13 actually a Supreme Court case and a First Circuit case  
14 that are helpful on this. The Supreme Court case is  
15 **Abel**, 469 U.S. 45, the First Circuit case is  
16 **Winchenback**, 197 F.3d 548 at 557 to 558, which relates  
17 to prior inconsistent statements. And **Winchenback**, as  
18 well as **Abel**, teach that if a -- if there's evidence of  
19 a prior statement, um -- you know, evidence of a prior  
20 inconsistent statement that is inconsistent with what  
21 was said in court, um, is admissible under Rule 613(b).  
22 If there's -- so, you know, arguably if he gave one name  
23 "Larosa" and this says "Dellarosa," then arguably  
24 they're inconsistent because he said his name was  
25 "Larosa."

1           He hasn't testified about a Social Security number  
2           and it's not inconsistent with that. I mean, there's no  
3           testimony for the Social Security number to be  
4           inconsistent with. It's also not clear whether he gave  
5           an incorrect Social Security number or somebody made a  
6           mistake. And I have to do the Rule 403 balancing. So  
7           far I thought that Mr. Larosa actually was pretty good  
8           for the defendant because he didn't go trade MAC  
9           addresses, he drove from Dorchester to Roxbury to get  
10          his, which is evidence of a lack of interdependence.

11          So there's not a material -- as I read this, it's  
12          not like he's saying "Smith" and "Jones," as I  
13          understand it, for Spanish names, you know, these are  
14          essentially different versions of the same name.

15               MR. MCGINTY: Well, rather than duly  
16          complicate things, my only cross, again, is on this  
17          issue and I would, um, under the circumstances, withdraw  
18          that cross and conclude my cross-examination.

19               THE COURT: All right. Just continue -- well,  
20          when you say "withdraw," you mean you're not any longer  
21          seeking the admission of these documents?

22               MR. MCGINTY: Correct. And since that's the  
23          only subject that I could raise on cross, if I withdraw  
24          that line of questioning, um --

25               THE COURT: What do you mean by withdraw the

1 line of questioning, do you want me to instruct the jury  
2 to disregard the testimony about the licenses?

3 MR. MCGINTY: No, so far there has been no  
4 testimony about the licenses. What he has done is he  
5 has looked at a photograph and said, "That's me," and  
6 he's looked at documents and said, "That's me," so  
7 there's no content -- I mean, my only cross so far has  
8 introduced no content to the jury whatsoever.

9 THE COURT: All right. I just wanted to  
10 understand.

11 Okay. Do you have any further questions for the  
12 witness?

13 MR. MCGINTY: I don't, your Honor.

14 THE COURT: All right. Is there going to be  
15 any redirect?

16 MS. SEDKY: May I have a moment, your Honor?

17 THE COURT: Sure.

18 (Pause.)

19 MS. SEDKY: I think we have nothing further.  
20 And if the Court would allow us, we'll just excuse  
21 Mr. Larosa.

22 THE COURT: No, I think I'll excuse him.

23 (Laughter.)

24 MS. SEDKY: Oh, okay, that's fine.

25 THE COURT: How long do you expect Mr. Hanshaw

1 to be?

2 MR. BOOKBINDER: Um, no more than 45 minutes,  
3 your Honor.

4 THE COURT: All right. Let's bring in  
5 Mr. Larosa and have Mr. Hanshaw right on deck.

6 (Pause.)

7 THE COURT: Oh, actually, that's a good  
8 point. Here, I'll tell Mr. Larosa he's excused. Okay.

9 (Mr. Larosa enters.)

10 THE COURT: All right. Mr. Larosa, your  
11 testimony is complete. You can go home. All right?  
12 Thank you very much.

13 THE WITNESS: Okay. Thank you.

14 (Witness steps down.)

15 THE COURT: Okay. Let's bring Mr. Hanshaw  
16 into the box.

17 (Witness takes stand.)

18 THE COURT: Am I correct that there are no  
19 foreseeable issues regarding Mr. Hanshaw's testimony?

20 MR. MCGINTY: I think that's correct, your  
21 Honor.

22 THE COURT: Okay.

23 MR. MCGINTY: Um, the only thing I would say,  
24 your Honor, is I would anticipate there would be  
25 objections with respect to the forum issue.

1 THE COURT: To the what?

2 MR. MCGINTY: To the forum issue and the  
3 questions in the nature of inquiries about forum. So I  
4 just want the Court to be aware of it.

5 THE COURT: What do you mean by "the forum"?

6 MR. MCGINTY: Um, the posts, there's an issue  
7 about -- the government plans to elicit testimony  
8 relating to forum posts. There may be issues that arise  
9 in that context. We want to alert the Court that that  
10 may be a primary area of contest.

11 MR. BOOKBINDER: In light of where the Court  
12 remembers our discussion on this issue last week, that  
13 unless the Court has had a change of heart, my  
14 understanding was that we're not to elicit any  
15 substantive statements.

16 THE COURT: I haven't really focused on --  
17 well, my thinking hasn't changed because you've given me  
18 many other things to think about and this is not the  
19 only thing I've been doing.

20 MR. BOOKBINDER: That's fine, your Honor. So  
21 we won't elicit any statements about posts.

22 THE COURT: Fine. We'll get the jury.

23 (Jury enters, 10:45 a.m.)

24 THE COURT: Ladies and gentlemen, good  
25 morning. Welcome back. Um, some issues arose over the

1 weekend, as often happens when people have time to think  
2 about things, and I've been dealing with that. It turns  
3 out that the parties have no further questions for  
4 Mr. Larosa. So he's been excused. And now you're going  
5 to be hearing the next witness.

6 My goal, I think, will be to finish the testimony  
7 of this witness before we take a break and we'll see  
8 where we are. I have some more issues I have to discuss  
9 with the lawyers. It's possible I'll send you home  
10 early today, but we'll see. Okay?

11 The witness should stand and be sworn.

12 (NATHAN HANSHAW, sworn.)

13 \*\*\*\*\*

14 \*\*\*\*\*  
15 NATHAN HANSHAW

16 \*\*\*\*\*

17  
18 DIRECT EXAMINATION BY MR. BOOKBINDER:

19 Q. Would you state your name and spell your last name  
20 for the record, please.

21 A. Nathan Hanshaw, H-A-N-S-H-A-W.

22 Q. How old are you, Mr. Hanshaw?

23 A. 20 years old.

24 THE COURT: Mr. Hanshaw, pull that microphone  
25 a little closer to you, please, and speak into it loudly



1 and clearly, because your audience is in the back row of  
2 the jury. Okay?

3 THE WITNESS: Yes.

4 Q. Mr. Hanshaw, where did you grow up?

5 A. In Athol, Massachusetts.

6 Q. Athol?

7 A. Yes.

8 Q. Where is that?

9 A. Um, west of Worcester.

10 Q. At some point did you move out of Athol?

11 A. Yes, I did.

12 Q. Where did you move to?

13 A. Worcester.

14 Q. When was that?

15 A. Approximately 2004, 2005.

16 Q. When you moved to Worcester, what kind of place did  
17 you live in?

18 A. An apartment complex.

19 Q. Who did you live there with?

20 A. My mother, my father, and my brother.

21 Q. When you moved to Worcester and lived in that  
22 apartment with your family, did you initially have  
23 internet access?

24 A. Yes.

25 Q. What kind of internet access did you have?

1 A. Dial-up.

2 Q. At that point, in 2004, 2005, was the internet  
3 something you used a lot?

4 A. Yeah, it was.

5 Q. At some point did you go to the website  
6 "tcniso.net"?

7 A. Yes, I did.

8 Q. What caused you to go to that website?

9 A. Um, a search engine, um, Google. I was looking for  
10 ways to get free high-speed internet.

11 Q. Why were you looking for free internet?

12 MR. MCGINTY: Objection.

13 THE COURT: Overruled.

14 A. Because my internet was to be cut off.

15 Q. When you say it was to be cut off, why were you  
16 going to lose internet access?

17 A. Um, my father was going to quit paying for it.

18 Q. So you went to Google and what did you look for in  
19 Google?

20 A. Um, ways to get free internet.

21 Q. Okay. And that led you to the TCNISO website?

22 A. Yes, it did.

23 Q. Approximately when was this?

24 A. I believe 2004, early 2005.

25 Q. Did you get any software products from that website?

1 A. Yes, I did.

2 Q. What was the first product that you got?

3 A. The firmware Sigma 1.3.

4 Q. Did you buy that?

5 A. No, I did not.

6 Q. How did you get it then from the website?

7 A. It was freeware available with a download.

8 Q. And did you do that, did you download it from that  
9 website?

10 A. Yes, I did.

11 Q. Did you later get other software products from that  
12 website?

13 A. Yes, I did.

14 Q. Which other ones?

15 A. A software called "One Step Zup," um --

16 Q. Let me stop you right there. I'm sorry. What was  
17 that name again?

18 A. "One Step Zup."

19 Q. "One Step Zup"?

20 A. Yes.

21 Q. How do you spell "Zup"?

22 A. Z-U-P.

23 Q. Okay. All right. Go on.

24 A. Um, also Sigma X.

25 THE COURT: Excuse me. Just one moment.

1 (Pause.)

2 THE COURT: I'm sorry. Why don't you go  
3 ahead.

4 Actually, why don't you ask that question one  
5 more time.

6 MR. BOOKBINDER: Sure.

7 Q. So I think you mentioned that you'd gotten Sigma  
8 1.3, something called One Step Zup, and Sigma X?

9 A. Yes.

10 Q. Were there other pieces of software that you got  
11 from that website?

12 A. Yes, um, "CoaxThief," "DefileThief," "SourceCat,"  
13 which is called "BlackCat."

14 Q. Okay. Let me stop you there again. What was the  
15 first name you said before "BlackCat"?

16 A. "SourceCat," that was just the, um, I guess official  
17 name of the software.

18 Q. "SourceCat"?

19 A. "SourceCat," but it's part of BlackCat.

20 Q. All right. Let's take these in pieces.

21 That BlackCat software, how did you get that?

22 A. Um, the TCNISO website.

23 Q. How is it -- was that available free?

24 A. Um, there was a freeware version, but you had to  
25 register, um, a BlackCat key to be able to download it.

1 Q. Did you have a BlackCat key?

2 A. I did.

3 Q. And how did you get that?

4 A. Um, Christopher Watts, an employee of TCNISO, he had  
5 sent me a list of keys and names.

6 Q. When you say "TCNISO," is that the name you use for  
7 "TCNISO," that's how you pronounce it?

8 A. Yeah, that's how I pronounce it.

9 Q. Right. So you say --

10 THE COURT: What's a key?

11 THE WITNESS: It allows you to download  
12 further specific things. It allowed me to download a  
13 copy of Sigma X and BlackCat software from the TCN  
14 website.

15 Q. Is it some kind of a code that you have to punch in?

16 A. It's a code that I had to punch in.

17 Q. And Christopher Watts gave that to you?

18 A. Yes, that's correct.

19 Q. And did you get, um, software or software keys from  
20 any other -- from anybody else at TCNISO other than  
21 Christopher Watts?

22 A. Yes, Isabella Lindquist.

23 Q. What did she give you?

24 A. Um, copies of the source code of Sigma 1.3, all the  
25 way up to 1.7, among other things.

1 Q. Now -- well, I'll ask you about it. Actually, why  
2 don't you, while we're talking about this, can you  
3 explain the circumstances of how you got those things  
4 from Isabella Lindquist?

5 A. I was talking to both developers of TCN for a  
6 certain period of time and over time I received software  
7 from them that otherwise I wouldn't have access to.

8 Q. Did you pay Isabella Lindquist for source code?

9 A. I don't recall. It's been a quite a while.

10 Q. Now, um, this software that you downloaded from the  
11 website, did you use it?

12 A. Yes.

13 Q. How did you know what to do with it?

14 A. Um, there's various instructions on the TCNISO  
15 website.

16 Q. When you say "instructions," what form did those  
17 instructions take?

18 A. Sometimes -- well, some stuff had video  
19 instructions, a video tutorial that showed you exactly  
20 how to -- for instance, to install, I believe it was,  
21 BlackCat or a serial cable, um, and then other times on  
22 the forums you get specific instructions on how to do it  
23 with help from other members and, um, some of the  
24 software came packaged with a text file explaining how  
25 to use it.

1 Q. All right. Did -- to use that TCNISO software, did  
2 you have to do anything with the MAC address on your  
3 modem?

4 A. Um, you didn't have to do anything to the MAC  
5 address, but I used it to alter my MAC address.

6 Q. And did you have to get a new MAC address to change  
7 yours, too?

8 A. Um, yeah, I did.

9 Q. How did you get new MAC addresses?

10 A. Um, I either trade them on the TCN forums or the TCN  
11 chat room and/or I would scan via SMP other nodes.

12 Q. So let's write these down. I think you identified  
13 three different things, right? The first thing you said  
14 is using the TCNISO forums. Is that something you did,  
15 did you trade MAC addresses that way?

16 A. Yes, I did.

17 Q. All right. Then you mentioned a chat room. What  
18 chat room was that?

19 A. Um, Pound Surfboard.

20 Q. And how did you find that particular chat room?

21 A. Um, I was linked to it off of TCN's website.

22 Q. Did you go to the chat room?

23 A. I did.

24 Q. And was that a place that you traded MAC addresses?

25 A. Yes, it was.

1 Q. I think the third thing you mentioned was sniffing  
2 for MAC addresses, correct?

3 A. Um, scanning.

4 Q. Scanning. Okay. And what software did you use to  
5 do that?

6 A. Um, I don't recall what it was, but it had allowed  
7 me to -- basically once I had the reiteration to my  
8 internet provider, it's kind of like a password-like  
9 visa, it allowed me to scan the network, kind of like an  
10 administrator, to which I would have access to MAC  
11 addresses and the associated information with them.

12 Q. Um, when you traded for MAC addresses on the TCNISO  
13 forums, mechanically how did that work?

14 A. Um, usually --

15 MR. MCGINTY: Objection.

16 THE COURT: Overruled.

17 Q. I'm not asking you about anything in particular you  
18 read or wrote, just mechanically how did it go?

19 A. Well, basically you find someone else with the same  
20 internet provider, tell them, "Hey, I have this. You're  
21 on the same provider. Do you want to trade?"

22 Q. And then what would happen?

23 A. We would trade MAC addresses.

24 Q. Would you be doing that through open posts that  
25 everyone on the forums could see?



1 A. Um --

2 MR. MCGINTY: Objection.

3 THE COURT: Excuse me. Here, let me explain  
4 it to you. If there's an objection, then you should not  
5 answer the question.

6 THE WITNESS: Okay.

7 THE COURT: Until I rule on it. If I say  
8 "overruled," that means you may answer. If I say  
9 "sustained," that means you may not answer.

10 THE WITNESS: Okay.

11 THE COURT: Okay?

12 Why don't you put the question again.

13 Q. Um, the --

14 THE COURT: You're asking him essentially to  
15 describe what a forum is.

16 Q. Well, actually what I'm asking is did you exchange  
17 this discussion, was this -- did this take place during  
18 public hosts on forums that were available to other  
19 members or was there some more private way in which you  
20 were communicating?

21 A. Usually a more private way I was communicating.

22 Q. So there would initially be a public post and then  
23 it would change, is that how it worked?

24 A. Yes.

25 Q. Okay. How did the private message work?

1 A. Um, basically I would send a person a message or  
2 they would send me a message asking if our MAC addresses  
3 were for, at that time, Charter Communications, and of  
4 course I would.

5 Q. Let me stop you there. When you said they would  
6 send you a message, what was that called?

7 A. A "private message."

8 Q. A "private message." Was that a function available  
9 through the TCNISO website?

10 A. Yes, it was.

11 Q. Go on.

12 A. And they would see the MAC address list and use it  
13 to get on line.

14 Q. Why was it necessary for you to trade MAC addresses  
15 with somebody else?

16 A. Because if I had a MAC address on my node and I  
17 tried to use it, I would be kicked off.

18 Q. So once you got these MAC addresses from other  
19 areas, what did you do with them?

20 A. I put them on my modem.

21 Q. Were you able then to get free internet access?

22 A. Yes, I was.

23 Q. From what company?

24 A. Charter Communications.

25 Q. What period of time did you have this free access?

1 A. From 2004, early '05 to May 1st, 2008.

2 Q. During that time period, um, you owned a TCNISO-  
3 modified modem?

4 A. Yes, I did.

5 Q. Are you familiar with what's called "uncapping"?

6 A. Yes, I am.

7 Q. What do you understand that to mean?

8 A. To remove the speed limitation imposed by your  
9 internet service provider.

10 Q. Did you uncap your modems as well?

11 A. Yes, I did.

12 Q. What version of software did you first use for  
13 uncapping?

14 A. I believe it was Sigma 1.3.

15 Q. How much did the uncapping increase your modem  
16 speed?

17 A. Approximately tenfold.

18 Q. So do you remember what the basic speed of the modem  
19 was before it was uncapped?

20 A. Yeah, about 3 megabits a second.

21 Q. 3 megabits per second?

22 A. Yeah.

23 Q. And what was it after it was uncapped?

24 A. 30.

25 Q. And for how long did you have that kind of speed?

1 A. Almost the whole time.

2 Q. Why did you want an uncapped modem, faster speed?

3 A. Um, it allowed me to download files faster, video  
4 files, upload faster. Um, otherwise something that  
5 would take four days might take me a couple of hours  
6 instead.

7 Q. You mentioned earlier the Pound Surfboard chat  
8 room. Did you -- what name did you use when you were in  
9 that chat room?

10 A. Um, I used different names, "DShocker," among other  
11 names. They were just random.

12 Q. When you were in that chat room, do you remember  
13 whether any TCNISO employees were in there at the same  
14 time?

15 A. Yes.

16 Q. Who?

17 A. Um, DerEngel, um, Isabella, Chris Watts, and  
18 somebody who used the nickname YourMomma.

19 THE COURT: What is it?

20 THE WITNESS: YourMomma.

21 Q. Did you have any kind of a special status in that  
22 chat room?

23 A. For a period of time I had voice status.

24 Q. Voice status?

25 A. Yes.

1 Q. What does that mean?

2 A. Basically that -- from my understanding I was  
3 helping people out, I got voice status, and if the  
4 channel became what's called "moderated," then I could  
5 still talk and regular users couldn't.

6 Q. Who gave you that status?

7 A. Um, Chris Watts.

8 THE COURT: Could I clarify something. When  
9 you say "talk," you mean --

10 THE WITNESS: Chat.

11 THE COURT: Chat. So you could chat when  
12 other people were not permitted to?

13 THE WITNESS: Right.

14 Q. And obviously when you say "talk" or "chat" you're  
15 typing?

16 A. I'm typing, right.

17 Q. Okay. Other than the Pound Surfboard group chat  
18 room, did you have other means of communication with  
19 people involved in TCNISO?

20 A. Yes.

21 Q. And what were those communications?

22 A. Um, Windows Messenger, MSN Messenger.

23 Q. MSN Messenger. So those were instant message chats  
24 essentially?

25 A. Yes.

1 Q. All right. Who did you chat with?

2 A. Um, Craig Phillips, Isabella Lindquist, um, at one  
3 point Brian Harris. Um, pretty much everybody who was  
4 involved in Surfboard.

5 Q. Chris Watts, also?

6 A. Yes.

7 Q. Okay. Let me ask you about each of them.

8 How often did you chat with Craig Phillips?

9 A. Um, quite a bit.

10 Q. What name did he use when you chatted with him?

11 A. "YourMomma."

12 Q. So when you say someone who used that name, you know  
13 who that person was?

14 A. Right.

15 Q. Okay. When you say you chatted with him quite a  
16 bit, what do you mean by that, every day, every week,  
17 every month?

18 A. Usually it was every day for quite a while.

19 Q. And did Craig Phillips give you access to anything  
20 on the TCNISO website?

21 A. Um, member's area access.

22 Q. What did he give you that allowed you to use the  
23 member's area?

24 A. Um, a membership, um, he -- he added a user name to  
25 the membership database that allowed me access without

1 eventually having to pay for access.

2 Q. All right. And you mentioned Isabella Lindquist.  
3 How frequently would you say you chatted with her, how  
4 many times?

5 A. Um, quite a few times. Um, I mean, enough to know  
6 where she lived in Kentucky, um, and I talked to her  
7 enough to know that she wasn't happy with her pay grade  
8 and all of that. So quite a bit.

9 Q. And how about Chris Watts, how much did you chat  
10 with him?

11 A. Um, quite a few times. He was the one who  
12 originally helped me get my modem on line.

13 Q. And, Ryan Harris, you said you chatted with him as  
14 well. What name did he use when you chatted with him?

15 A. "DerEngel."

16 Q. And how many times did you chat with him?

17 A. Only one or twice.

18 Q. Um, and in those chats do you remember what name you  
19 used?

20 A. No.

21 Q. At some point, um, did you ever ask to be a  
22 moderator of the TCNISO forums?

23 A. Yes.

24 Q. Who did you ask?

25 A. Craig Phillips.

1 Q. What did he say?

2 A. Um, to ask Harris.

3 Q. Did you do that?

4 A. I did.

5 Q. And what did Harris say?

6 A. Um, I don't recall. I remember, at one point, I  
7 believe he did tell me "No."

8 Q. Did he ever allow you to be a moderator?

9 A. No.

10 Q. All right. Do you remember any other specific chats  
11 you had with Ryan Harris?

12 A. Yeah, I had a chat with him under a random nickname  
13 about bit files.

14 Q. Bit files?

15 A. Yes.

16 Q. And, um, what if anything do you remember him saying  
17 or asking him?

18 A. Just basically that if I could tell him how to  
19 change the firmware in modems without the need of  
20 software and he'll give me a reward.

21 Q. Did that ever end up happening?

22 A. No.

23 Q. Did your relationship, your on-line relationship  
24 with Ryan Harris, change over time?

25 A. Yeah.



1 Q. Would you describe that?

2 A. First I was all right with him, I didn't really care  
3 or whatever, and over time, um, his attitude on line  
4 changed, like he was acting cocky, so I did the same  
5 thing.

6 THE COURT: He was what?

7 A. Kind of like a cocky attitude, so I kind of did the  
8 same thing towards him.

9 Q. So he had a cocky attitude and so you took on a  
10 cocky attitude as well?

11 A. Yes.

12 Q. Did your relationship deteriorate at that point?

13 A. Yeah.

14 Q. Um, are you familiar with the forums, the TCNISO  
15 forums?

16 A. Yes, I am.

17 Q. Did you make posts on those forums?

18 A. Yes, I did.

19 Q. Under what names, if you remember?

20 A. Um, there were multiple, "DShocker," "Modem," and I  
21 know there are others, but it's been awhile, so I don't  
22 remember.

23 Q. The posts you made on forums, um, how long do they  
24 stay up there?

25 A. Um, usually they weren't taken down.

1 Q. They were not taken down?

2 A. Not usually.

3 Q. Meaning they lasted for how long, approximately?

4 A. Um, till whoever decided to go to the forums and  
5 delete them. Um, I've had my posts up there for six  
6 months or so and, as far as I know, they wouldn't get  
7 deleted.

8 Q. At some point, um, did you get banned from the  
9 forums?

10 A. I did.

11 Q. Did you end up getting back on later?

12 A. I did.

13 Q. How is it that you were able to get back on the  
14 forums?

15 A. Just, um, I registered under a new user name.

16 Q. All right.

17 MR. BOOKBINDER: Your Honor, I'd like to show  
18 Mr. Hanshaw a document that's not yet in evidence, on  
19 the screen, marked for identification, and at this point  
20 as Exhibit 11. But I think the jury monitors may still  
21 be on. I don't know.

22 THE COURT: I just turned them on.

23 MR. BOOKBINDER: Okay. They're off. Thank  
24 you.

25 (Pause.)

1 Q. Now, um, Mr. Hanshaw, do you recognize that  
2 document?

3 A. I do.

4 Q. What is it?

5 A. It seems to be an MSN Messenger conversation between  
6 myself and a gentleman named Brad Dennis.

7 Q. So by a "conversation," are you talking about that  
8 it's a chat log?

9 A. A chat log, yeah.

10 Q. Now, there's two, um -- okay. So you were one of  
11 the speakers here and you say the other person is Brad  
12 Dennis?

13 A. Yes.

14 MR. BOOKBINDER: All right. The government  
15 offers Exhibit 11.

16 THE COURT: As I understand it, there's no  
17 objection, so it is admitted.

18 MR. BOOKBINDER: Thank you.

19 (Exhibit 11, marked.)

20 Q. Now, what's the date on this log?

21 A. Um, Monday, January 15th, 2007.

22 Q. And it looks like one of the speakers is -- what's  
23 written on there is "Source." Who is that?

24 A. Brad Dennis.

25 Q. When you were chatting with him, did you use the

1 name "source" or is that something that's been written  
2 over later?

3 A. It's been written over later.

4 Q. The other speaker is kind of a -- it's five wavy  
5 lines. Who's that?

6 A. That would be me.

7 Q. You used that as a nickname at this point?

8 A. I don't believe so.

9 Q. Okay. So, again, that's been changed as well?

10 A. Yes.

11 Q. So you recognize this as a conversation you had?

12 A. Yes, I do.

13 Q. Now, I'm not going to ask you about any of the  
14 details of this conversation, but at the time you were  
15 speaking with Brad Dennis, do you know where he was,  
16 where he was living?

17 A. In Washington.

18 Q. Is that Washington, D.C. or the State of Washington?

19 A. The State of Washington.

20 Q. How do you know that?

21 A. I had obtained his information from customer service  
22 records and I sent SWAT to his address.

23 Q. All right. Well, I'm going to ask you more about  
24 that in a minute. But you said from customer service  
25 records, customer service records from where?

1 A. An internet provider.

2 Q. You essentially hacked into an internet provider and  
3 got that customer record showing his address?

4 A. Yes, I believe that's how I would have obtained it.  
5 This is how I obtained everyone else's information at  
6 that point.

7 Q. All right. And you said that later on, um, you sent  
8 police to his house?

9 A. That's correct.

10 Q. I'll ask you more about that in a minute.

11 But, um, at this time, and this is January of  
12 2007, were you using a Sigma-modified modem for internet  
13 access?

14 A. Yes.

15 Q. And you were living where?

16 A. Um, Worcester, Massachusetts.

17 MR. BOOKBINDER: Your Honor, I'd like to now  
18 show, um, Mr. Hanshaw another document not yet in  
19 evidence.

20 THE COURT: Actually what number is this?

21 MR. BOOKBINDER: It's marked for  
22 identification as Exhibit 12.

23 THE COURT: All right. And I think there's no  
24 objection to that one either.

25 MR. BOOKBINDER: Oh, all right, that's --

1 THE COURT: Is that correct, Mr. McGinty?

2 MR. MCGINTY: That's correct.

3 MR. BOOKBINDER: All right. Then the  
4 government offers Exhibit 12.

5 THE COURT: Exhibit 12 is admitted.

6 (Exhibit 12, marked.)

7 Q. What's Exhibit 12?

8 A. Exhibit 12 is a conversation between myself and Brad  
9 Dennis.

10 Q. Again, when you say a "conversation," you mean a  
11 chat log?

12 A. A chat log.

13 Q. Here what name is Brad Dennis using?

14 A. "Brdennis@gmail.com."

15 Q. What name are you using?

16 A. "Ddos@serials."

17 Q. You say "ddos," that's D-D-O-S?

18 A. Yes.

19 Q. Is that some kind of internet attack, basically?

20 A. Yes.

21 Q. If I scroll down to the bottom of the page, what's  
22 the date on this one?

23 A. December 6th, 2007.

24 Q. Where was, um, Brad Dennis living at that time, if  
25 you know?

1 A. Washington state.

2 Q. And where were you?

3 A. Worcester, Massachusetts.

4 Q. Is it fair to say that one thing you used your  
5 internet access for was to commit crime?

6 A. That's correct.

7 Q. In fact, you pled guilty in 2008 in federal court to  
8 a series of computer crimes, is that correct?

9 A. That's right.

10 Q. Were some of those hacking crimes?

11 A. Yes, they were.

12 Q. You mentioned earlier, um, sending police to  
13 someone's house. What's that called?

14 A. "Swatting."

15 Q. "Swatting," S-W-A-T-T-I-N-G?

16 A. Yes.

17 Q. Can you explain what "swatting" is?

18 A. Um, attempt to trick emergency services to raid an  
19 enemy's house.

20 Q. So when you say "raid," you're trying to get the  
21 SWAT team basically to show up at someone's house that  
22 you don't like?

23 A. Right.

24 Q. Did you succeed in getting that to happen?

25 A. I did.

1 Q. Is it fair to say that's a pretty dangerous thing to  
2 do?

3 A. Yes.

4 Q. Um, are you familiar with something called  
5 "carding," C-A-R-D-I-N-G?

6 A. Yes.

7 Q. Is that something you did also?

8 A. It is.

9 Q. What's that?

10 A. Um, you sell credit cards to order goods and  
11 merchandise on line.

12 Q. I'd now like to show you what's marked as Exhibit  
13 27. I don't think there's an objection to this one  
14 either.

15 THE COURT: Okay. 27 is admitted.

16 (Exhibit 27, marked.)

17 Q. Now, on the screen is the first page of a multipage  
18 document. What is this?

19 A. It's my plea agreement.

20 Q. What's the date on that?

21 A. Um, september 15th, 2008.

22 Q. And, um, in this agreement, um -- actually, yeah,  
23 why don't you describe what you, um, agreed to do in  
24 this plea agreement.

25 A. I agreed to be truthful with the government about



1 any and all of my crimes. I agreed to testify at any  
2 grand jury, hearing, or trial. Um --

3 Q. Did you also agree to plead guilty?

4 A. Yes, I agreed to plead guilty.

5 Q. And does this plea agreement contain an agreement on  
6 what sentence you would receive if you pled guilty?

7 A. Yes.

8 Q. When you committed the crimes that are subject to  
9 this plea agreement, how old were you?

10 A. Um, 16.

11 Q. So you were a juvenile?

12 A. I was.

13 Q. What was the sentence that you and the government  
14 agreed on?

15 A. 11 months of incarceration.

16 Q. Did you actually receive that sentence?

17 A. I did.

18 Q. Have you served your time already?

19 A. Yes, I have.

20 Q. At this point what if anything are you expecting  
21 from the government in return for your cooperation?

22 A. Nothing.

23 Q. Are you in custody now?

24 A. Yes.

25 Q. Why?

1 A. Um, a probationary violation.

2 Q. So you served your sentence and you were out on  
3 probation --

4 A. Yes.

5 Q. -- and you committed other crimes or violated your  
6 terms of probation?

7 A. Yes.

8 Q. And now you're back in jail?

9 A. That's right.

10 MR. BOOKBINDER: Your Honor, if I could just  
11 have a moment?

12 THE COURT: Yes.

13 (Pause.)

14 MR. BOOKBINDER: No further questions.

15

16 CROSS-EXAMINATION BY MCGINTY:

17 Q. Mr. Hanshaw, good morning.

18 A. Good morning.

19 Q. You have spoken a few times with the government in  
20 preparation for your testimony today, have you not?

21 A. Yes, I have.

22 Q. Tell us how many times you've spoken with the  
23 government?

24 A. Um, in total I believe it was three times.

25 Q. Three times.

1           Do you remember talking to the government shortly  
2     after you were arrested?

3     A.   Yes.

4     Q.   And that would have been May 1st of 2008. Do you  
5     remember that?

6     A.   Yes.

7     Q.   Do you remember a short time after that you met with  
8     them again on May the 7th and May the 9th to discuss  
9     matters further, am I right?

10    A.   Um, I don't know the exact dates, but I did discuss  
11    further with them.

12    Q.   Do you remember meeting with the government in  
13    September of '08?

14    A.   I met with them multiple times, but I don't remember  
15    the exact dates.

16    Q.   Do you remember meeting with them in March and May  
17    of '09?

18    A.   Um, I do remember meeting them in May of '09.

19    Q.   Do you remember meeting with them in January of this  
20    year and also February 14th, just a few days ago?

21    A.   Um, I remember meeting with them this year, yes.

22    Q.   So would it be fair to say that a number of times  
23    you met with the government after your arrest probably  
24    comes up to eight times, is that fair to say?

25    A.   Um, I'm not quite sure. I wouldn't say -- I don't

1 believe it was that many, but --

2 Q. Would you say it's significantly more than three?

3 A. I would say it was at least three times.

4 Q. Now, you are by skill a "social engineer"? You know  
5 what that means, right?

6 A. I guess so.

7 Q. And so you're a "social engineer," right?

8 A. I wouldn't call myself a "social engineer."

9 THE COURT: Excuse me just a second.

10 (Pause.)

11 Q. Would you agree with me that a "social engineer" is  
12 someone who manipulates people into doing things or  
13 divulging confidential information?

14 A. Yes.

15 Q. And you have, several times, you've used the skill  
16 of social engineering to get information, including  
17 confidential information, from people who were deceived  
18 about who you were?

19 A. Yeah, that's correct.

20 Q. Now, that's the essence of what "social engineering"  
21 is, isn't it?

22 A. Yes.

23 Q. And the skill of the social engineer is to learn  
24 what somebody else doesn't want to surrender, isn't that  
25 true?

1 A. Um, I guess.

2 Q. To get from them something they don't want to give,  
3 am I right?

4 A. That's correct.

5 Q. If they knew who you were, right?

6 A. Right.

7 Q. And when you did your social engineering with  
8 Motorola, with Roadrunner, with Comcast, with any number  
9 of ISPs, did you ever tell them who you were?

10 A. No, not my true identity.

11 Q. When you penetrated the ISPs and got into their  
12 confidential websites, in getting there did you ever  
13 tell the people that you got that information from who  
14 you were?

15 A. No, I did not.

16 Q. You're very skillful, aren't you?

17 A. Um, you could -- well, I'm not going to say I am,  
18 but you could say I am.

19 Q. You know what a "botnet" is, don't you?

20 A. Yes, I do.

21 Q. A "botnet," and tell me if I'm wrong, is a network  
22 of thousands of compromised computers, is that true?

23 A. Yeah, that's true, but it doesn't have to be  
24 thousands, though.

25 Q. It could be a number of compromised computers,

1 right?

2 A. That's right.

3 Q. And you can infect them with a malicious software  
4 code, right?

5 A. A "botnet" is actually a malicious code.

6 Q. Now, typically the person who owns the computer  
7 doesn't know that you've captured them, does he?

8 A. No.

9 Q. So you crawl in someone's computer to bend it to  
10 your will and to make it do malicious things, fair to  
11 say?

12 A. Um, yes.

13 Q. Among the things you did was to perform multiple  
14 denial-of-service attacks on people you didn't like,  
15 right?

16 A. That's correct.

17 Q. And a denial-of-service attack means marshaling all  
18 those captive, infected computers --

19 A. Yes.

20 Q. -- of people who don't even know you, right?

21 A. Yes.

22 Q. -- and directing them in a malicious way toward an  
23 innocent website, am I right?

24 A. Yes.

25 Q. And shutting it down, right?

1 A. Um, yes.

2 Q. Destroying it, if you can, right?

3 A. Well, not so much to destroy, it's just that it  
4 can't handle any traffic at the moment, so, um, why it's  
5 called a "denial of service" is you deny service at that  
6 time, but the website is not permanently destroyed.

7 Q. It takes a lot of skill to do this, right?

8 A. I would say not.

9 Q. It's just an average skill someone has to direct a  
10 herd of botnets to shut down a website, just the kind of  
11 skill that lots of people have, right?

12 MR. BOOKBINDER: Objection.

13 THE COURT: I'm sorry. Just ask him once.

14 Q. It's an unusual skill, is it not?

15 A. Um, I wouldn't say so much it's unusual. I've known  
16 plenty of people who knew exactly what a botnet was and  
17 is.

18 Q. Um, you were a swatter, you testified about that on  
19 direct, am I right?

20 A. Yes.

21 Q. And when you swat you obtain a swatting victim's  
22 phone numbers and physical addresses usually by hacking  
23 into the ISP that's got that information to learn that  
24 information, am I right?

25 A. That's right.

1 Q. So you have the ability to penetrate into an ISP to  
2 get the confidential information, am I right?

3 A. Yes.

4 Q. To use that confidential information for purposes of  
5 marshaling an attack against that person, am I right?

6 A. Yes.

7 Q. You would then use 911 or other emergency service  
8 calls in order to, um, call in the police to that  
9 location, am I right?

10 A. Yes.

11 Q. And you would claim that somebody is being harmed,  
12 correct?

13 A. Um, yes, usually.

14 Q. So this would hoax an emergency call to get a SWAT  
15 team to arrive at their house, right?

16 A. Yes.

17 Q. While people were eating dinner, right?

18 A. Um, no, not just any person, um, a lot of them are  
19 pedophiles.

20 Q. In Seattle, you called the Seattle police, am I  
21 right?

22 A. That's correct.

23 Q. And you were spoofing, falsifying, right, so people  
24 didn't know it was you doing it, you were spoofing a  
25 phone number, correct?



1 A. That's correct.

2 Q. So you made a call to the Seattle police, right?

3 A. Yes.

4 Q. You spoof their number so no one knows it's you,  
5 right?

6 A. Yes.

7 Q. It appears to be that victim's number, am I right?

8 A. Yes.

9 Q. And you claimed that someone was armed and had just  
10 shot someone at that victim's address, am I right?

11 A. Well, I don't have the exact details, but, yeah,  
12 that sounds correct.

13 Q. Now, this was an awful lot of fun, wasn't it?

14 A. Um, it wasn't really so much it's fun, it's just  
15 more of an ego thing.

16 Q. An ego thing. Sometimes you had people listening in  
17 on the line so that they would hear the response of the  
18 people, am I right?

19 A. Um, yes.

20 Q. That was the fun part, right?

21 A. Um, yes.

22 Q. And the police then show up in this Seattle  
23 location, right, their weapons are drawn, and at gun  
24 point -- at gun point they detain the victim and his  
25 mother, right?

1 A. Yes.

2 Q. And that must have been world-class fun, right?

3 A. Not really.

4 Q. They held the mother and the son at gun point while  
5 they searched the house, right?

6 A. I don't know the exact details, but I would imagine  
7 so.

8 Q. And while this is happening they're frightened for  
9 their lives on the floor, am I right?

10 A. Um, I wouldn't know. I know that --

11 Q. And maybe --

12 THE COURT: I'm sorry. He hasn't finished his  
13 answer.

14 A. I know that Brad Dennis, who you're speaking of,  
15 knew it was coming because he dared me to do it.

16 Q. He dared you to do it.

17 Do you think the victim and the victim's mother  
18 knew this was coming?

19 A. I knew the victim knew it was coming because he's  
20 the one who told me that I couldn't do it.

21 Q. Do you think the mother knew it was coming?

22 A. Probably not.

23 Q. You reported a bomb threat to a high school in  
24 Florida, am I right?

25 A. Yes.

1 Q. You reported an armed gunman at a school?

2 A. Yes.

3 Q. You caused the authorities to evacuate that school?

4 A. I believe so.

5 Q. You did this about 17 times, right?

6 A. Yes.

7 Q. Oh, actually 17 times that we know about, right?

8 A. Yes.

9 Q. You also got stolen credit cards from people,  
10 right?

11 A. Yes.

12 Q. This was also information you got by your skill at  
13 penetrating into providers' secret confidential computer  
14 databases, am I right?

15 A. No.

16 Q. You obtained these numbers in order to get credit  
17 cards, am I right?

18 A. Um, would you repeat the question?

19 Q. You obtained stolen credit card numbers and you used  
20 these numbers to charge purchases on those victim credit  
21 card accounts, am I right?

22 A. Yes.

23 Q. (Pause.) Your family, do I understand correctly,  
24 had cable TV, am I right?

25 A. Yes.

1 Q. So they had a cable service coming into their  
2 apartment, correct?

3 A. Yes.

4 Q. You were using a means to try to get internet  
5 service on a live cable TV modem, do I understand that  
6 right?

7 A. Um, yes.

8 Q. Now, you used other ways to access the internet  
9 apart from this DSL line. Do you remember that you  
10 accessed the internet from open WIFI access points in  
11 your neighborhood. Do you remember that?

12 A. Um, I did at some point, but not often.

13 Q. Not often. Okay.

14 Now, when you told this to the government, it was  
15 shortly after you were arrested, am I right?

16 A. Um, it may have been. I don't remember exactly  
17 when.

18 Q. Now, when you -- let me back up a second.

19 So you agree that you did access the internet from  
20 open WIFI access points in the neighborhood?

21 A. At one point I did.

22 Q. Okay. And how many times did you do that?

23 A. Well, I don't know exactly, but it wasn't that many  
24 because I had a modem.

25 Q. Okay. Now, this is called "war driving," am I

1 right?

2 A. Yes.

3 Q. All right. Now, "war driving" creates several  
4 different possibilities of theft of service, am I right?

5 A. Yes.

6 Q. Now, you can sit outside somebody's house and  
7 basically piggyback on their service while you're  
8 sitting there with your computer in your lap, am I  
9 right?

10 A. Yes.

11 Q. And while you're there, you can use their WIFI and  
12 download things on your computer, am I right?

13 A. Yes.

14 Q. And when you do it, you're not downloading it  
15 through your house's cable wire, are you?

16 A. Not through mine specifically, but it might be  
17 through theirs.

18 Q. It might be through theirs, right?

19 A. Right.

20 Q. But they may have DSL, right?

21 A. Right.

22 Q. So when you squat on a live WIFI, you're squatting  
23 on whatever service they have which could be wire,  
24 cable, it could be DSL, am I right?

25 A. Yes.

1 Q. It could be other forms of high-speed internet,  
2 right?

3 A. Yes.

4 Q. And you don't care, do you?

5 A. No.

6 Q. And while you do that, you have the capability of  
7 downloading that information, right?

8 A. What information?

9 Q. The information that you're squatting there to  
10 steal, am I right?

11 A. Um, would you elaborate a little bit.

12 Q. I asked you a short time ago whether among the  
13 things you can do when you war drive is sit outside  
14 someone's house and squat on their service, basically  
15 use their service from outside?

16 A. Yes.

17 Q. Now, the other thing you can do is you can steal  
18 their confidential information, am I right?

19 A. Yes.

20 Q. Including their MAC address, am I right?

21 A. Yes.

22 Q. Including their IP address, right?

23 A. You can steal their IP address, um, but for their IP  
24 address you need only -- only one can be on line at one  
25 time or you can't steal their IP.

1 Q. Now, that service that you're stealing from is an  
2 unsecured WIFI service, right?

3 A. Yes.

4 Q. Probably a lesser challenge for someone of your  
5 skills than hacking into Roadrunner or Charter or  
6 Comcast, fair to say?

7 A. Yeah, it was easy.

8 Q. Must have been child's play, right?

9 A. It would that at first.

10 Q. So when you met with the government, you told them  
11 that you had received modified modems from individuals  
12 on Max Fraud. Do you remember telling them that?

13 A. Um, I don't recall. It's been quite a while.

14 Q. Do you recall meeting with the government on May 9th  
15 of 2008?

16 A. Again, it's been a long time, so I don't remember  
17 the specific dates.

18 Q. (Pause.) Do you remember meeting with the  
19 government on May the 9th of 2008?

20 A. I don't recall the dates as I have previously  
21 stated.

22 MR. MCGINTY: I'm going to put this on the --

23 THE COURT: I've turned the jurors' monitors  
24 off.

25 Q. Now I'm directing your attention to where my finger

1 is and I ask you to read that sentence there to  
2 yourself. And would you also look at other parts of  
3 that and see if it refreshes your recollection as to  
4 what you had said to the government on May 8th of 2008.

5 A. (Reads.)

6 Q. Does it refresh your recollection?

7 A. Um, yeah.

8 Q. Do you recall telling the government that you had  
9 frequented the network Max Fraud and received modified  
10 modems from individuals on Max Fraud?

11 A. Um, I do remember telling them I was on Max Fraud.  
12 I don't remember receiving modified modems from Max  
13 Fraud.

14 Q. Now, you testified that every time you accessed the  
15 internet you did it using TCNISO software, do you  
16 remember saying that in your direct testimony?

17 A. Yes.

18 Q. Isn't it the case that you had modified modems that  
19 you got from other places, isn't that true?

20 A. Yes.

21 Q. You were friends with a gentleman called Chris  
22 Dixon, were you not?

23 A. I was.

24 Q. And he shared information with you and you with him,  
25 fair to say?



1 A. Yes.

2 Q. And parts of the information related to, um, access  
3 into the Charter internet network, correct?

4 A. Yes.

5 Q. In other words, the confidential information inside  
6 the server of Charter, right?

7 A. Yes.

8 Q. Dixon provided you with credit card information, did  
9 he not?

10 A. He did.

11 Q. You would use that information in order to buy goods  
12 and services on the internet, am I right?

13 A. Yes.

14 Q. Dixon also sold modified modems, didn't he?

15 A. Yes.

16 Q. You knew a person who went by the name  
17 "F-D-R-C-S-A," am I getting that right?

18 A. The first name.

19 Q. The first name. Who is that?

20 A. A programmer.

21 Q. And what is his name?

22 A. I don't know his name.

23 Q. Had you been in contact with him?

24 A. Um, I have at one point. I believe I talked to him.

25 THE COURT: All right. You're going to have

1 to keep your voice up, please.

2 A. Yeah, at one point I do believe I talked to him.

3 Q. Okay. What's that one point that you talked to him?

4 A. Um, this was years ago so I don't really remember,  
5 but I was dealing with other stuff in my life, so I  
6 don't remember exactly everything.

7 Q. Okay. Now, you knew that he created a hacked  
8 version of Sigma X, you knew that, right?

9 A. Yes.

10 Q. In other words, the Sigma program that was sold by  
11 TCNISO had been duplicated and sold by other vendors, am  
12 I right?

13 A. I don't believe it was actually sold, um, I believe  
14 it was released and for people to use, but they had to  
15 pay for it.

16 Q. And that was a modified form of Sigma X, am I right?

17 A. Yes, but I believe the only real modification was  
18 the background was changed a little bit and it was made  
19 so that you don't have to have a license to use it.

20 Q. Okay. And that software was available through this  
21 download that you say you spoke to once, am I right?

22 A. Yeah, I mean I may have spoken to him more than  
23 once. I don't really recall.

24 Q. Did he have a website?

25 A. Um, I don't recall.

1 Q. Did he have a name?

2 A. The first name you mentioned is what he went by.

3 Q. Did you ever mention this to the government?

4 A. Um, I don't know.

5 Q. Maybe the answer is "No, you didn't," is that the  
6 answer?

7 THE COURT: No, that's not --

8 Q. Isn't it the case that you had not mentioned his  
9 name to the government?

10 A. Um, if I didn't it's probably because I'd seen no  
11 reason to mention his name to the government because I  
12 didn't think it would be interested in a modified  
13 version of Sigma.

14 Q. Sigma worked on the Motorola 4100 series, am I  
15 right?

16 A. Yes.

17 Q. And the BlackCat worked on the 5100 series, am I  
18 right?

19 A. BlackCat had all the ability to program all the  
20 modems, the 4100 and the 4200.

21 Q. Now, when you were asked on direct about Sigma and  
22 you were asked, "What was the first program that you got  
23 from TCNISO?" You said, "I believe Sigma 1.3"?

24 A. Yes.

25 Q. So you didn't say "Sigma 1.3," you said, "I believe

1 Sigma 1.3," correct?

2 A. That's correct.

3 Q. When you were asked about -- in a different moment  
4 in the direct, and you were asked about what the first  
5 product was that you got from TCNISO, you said "firmware  
6 similar to 1.3," didn't you?

7 A. No, I said "firmware Sigma 1.3."

8 Q. So you didn't say "similar to," you said "firmware  
9 Sigma"?

10 A. Yeah.

11 Q. Now, the Sigma that you got was free on the website,  
12 am I right?

13 A. Yes.

14 Q. And it was in essence freeware, correct?

15 A. Yes.

16 Q. Now, this was also true of the BlackCat firmware  
17 that you talked about as well, both of them "freeware"  
18 as you described it, am I right?

19 A. Yes.

20 Q. And "freeware" means that you go to the website and  
21 you download it -- that's your testimony, right?

22 A. Yeah.

23 Q. So you're never purchasing anything, are you?

24 A. Um, you would have to purchase BlackCat to be able  
25 to program the SB-5100.

1 THE COURT: Mr. Hanshaw, try to keep your  
2 voice up, please.

3 A. You would have to purchase BlackCat to be able to  
4 program Sigma X onto the modem.

5 Q. Now, when you -- so when you testified about  
6 getting -- well, strike that.

7 Before you have any dealings with TCNISO, you  
8 undertake your preparations for the call, is that fair  
9 to say?

10 A. Yeah.

11 Q. Because you don't call someone and hold and --  
12 without having figured out exactly what it is you want  
13 to get and how it is you want to get it, correct?

14 A. Correct.

15 Q. So you don't call TCNISO and say, "Gee, I'd like a  
16 product," do you?

17 A. Um, you can't order it, so, yeah.

18 Q. So you then, using your social engineering skills,  
19 you learn as much as you can about TCNISO, am I right?

20 A. I wouldn't say, at that time, specifically related  
21 to learning about TCN, um, I more or less just wanted to  
22 be a software developer because I found it intriguing, a  
23 device such as that would do so many things.

24 Q. Now, um, you contacted at some point Craig Phillips?

25 A. Yes.

1 Q. And it was Phillips -- and as you describe it in  
2 your discussions with him, you began to "suck up to  
3 Phillips," those are the words you used, am I right?

4 A. That's right.

5 Q. And in sucking up to him you're trying to impress  
6 him with how much you know, am I right?

7 A. That's right.

8 Q. Now, this is basically the same technique you used  
9 on Isabella Lindquist, am I right?

10 A. Um, yeah, I would say so.

11 Q. And the trick with her is you had to persuade her  
12 that you had some source code in order to get the rest  
13 of the source code from her, am I right?

14 A. No.

15 Q. Isn't it true that you had some of the source code  
16 for Sigma?

17 A. Yes.

18 Q. And that when you got it, you had hacked in order to  
19 get it?

20 A. In order to get it, I didn't hack, I, um, received  
21 it from developers.

22 Q. From developers. You got it from someone else,  
23 right?

24 A. Um, from the employees at TCNISO.

25 Q. Okay. Now, the employees of -- so when you get this

1 from the developers, are you paying for it?

2 A. No.

3 Q. And when you got it from them, did you tell them who  
4 you were?

5 A. They knew who I was.

6 Q. They knew who you were and -- how did you identify  
7 yourself, as "DShocker"?

8 A. That's correct.

9 Q. And when you identified yourself as "DShocker," did  
10 you say to them, "I'd like to get the source code for  
11 Sigma"?

12 A. In a roundabout way I eventually got it from them.

13 Q. And the roundabout way is you used deception, am I  
14 right?

15 A. No, no, I wouldn't say so, I just talked to them,  
16 you know, kind of in a regular basis, you know, person  
17 to person.

18 Q. And you kind of tried to persuade them that you  
19 already had part of it, right?

20 A. Excuse me?

21 Q. You tried to persuade them that you already had part  
22 of it, right?

23 A. Um, I don't believe so, because they're the ones who  
24 gave me the source code.

25 Q. Now, over time you'd work on them until they give

1     you part of this source code, you describe, that's your  
2     testimony, right?

3     A.   Um, yeah.

4     Q.   By you don't get all of it, do you?

5     A.   I do, actually.

6     Q.   You do. But the way you do is you call Isabella  
7     Lindquist, right?

8     A.   Um, I talk to her over the internet.

9     Q.   Now, originally -- strike that.

10           At some point you were talking to Isabella  
11     Lindquist using a private communication, just you and  
12     her, right?

13     A.   That's right.

14     Q.   And in the private communications, you were  
15     complaining about Ryan Harris, weren't you?

16     A.   Um, at some point I may have, but I don't recall,  
17     no.

18     Q.   Because he didn't like you, did he?

19     A.   Um, I wouldn't imagine so.

20           THE COURT: I'm sorry. I couldn't hear you.

21           THE WITNESS: I wouldn't imagine so.

22     Q.   Now, um, you had once tried to be -- you had once  
23     tried to be a moderator on the forum, right?

24     A.   Yes.

25     Q.   And Harris's response to you was, "I don't know who



1     you are," isn't that right?

2     A.   Um, I believe so.

3     Q.   Now, when you did this you were using your name,  
4     "Nathan," right, you weren't using "DShocker," right?

5     A.   I don't know.  I was probably using -- um, if I was  
6     talking in MSN Messenger, I was probably using my  
7     nickname "Nate57" --

8                 THE COURT:  What's that?

9                 THE WITNESS:  If I was using Messenger, I was  
10    talking -- I believe I was probably using  
11    "Nate57@hotmail.com."

12    Q.   I'm going to show you a document and ask you to look  
13    at it and see if it helps you remember this  
14    communication.

15                 THE COURT:  Wait a minute.  Wait a minute.

16                 (Pause.)

17    Q.   The record is --

18                 THE COURT:  Excuse me.  I'm not -- is this  
19    something that's in evidence?

20                 MR. MCGINTY:  Yes.

21                 MR. BOOKBINDER:  No, it isn't.

22                 THE COURT:  Here, Dan.

23                 MR. MCGINTY:  I'm sorry, your Honor.  May I  
24    have a moment?

25                 THE COURT:  Yes.  The jurors' monitors are not

1 on.

2 (Pause.)

3 Q. Have you had a chance to review this?

4 A. Um, I have.

5 Q. Now, did you remember -- well, does this help you  
6 refresh your recollection about what your communication  
7 was?

8 THE COURT: And let me explain. You're not  
9 to, um -- the question is -- well, actually, when you  
10 say "What's your communication?" In order to refresh  
11 his recollection, first of all, it has to be something  
12 that he didn't remember. So he was talking about what  
13 name he was using --

14 MR. MCGINTY: And he hadn't remembered.

15 THE COURT: Right. So you should focus your  
16 question on that. And then the issue is going to be not  
17 what does it say on a piece of paper, but having seen  
18 that, does it cause you to have an independent memory,  
19 as you sit here today, something you didn't remember  
20 before you saw it? But this isn't intended to have you  
21 tell the jury what's on the paper, unless you have a  
22 personal memory of it now.

23 A. (Looks.)

24 Q. Does this refresh your recollection about what name  
25 you used?

1 A. Um, yeah. Yes.

2 Q. And what name did you use?

3 A. My name "Nathan."

4 Q. So you didn't identify yourself as "DShocker," did  
5 you?

6 A. No.

7 Q. And do you recall that the conversation related to  
8 whether Mr. Harris would permit you to be a moderator on  
9 the forum, do you remember that?

10 A. Yes.

11 Q. And do you remember that Harris's response to you --

12 THE COURT: In fact, there's no reason for  
13 them to keep that up right now.

14 Q. Do you remember Harris's response to be, "I don't  
15 know you"?

16 A. Um, I don't recall what his response was.

17 Q. And, um, do you recall that you were not made a  
18 moderator on the forum?

19 A. Yes.

20 Q. Now --

21 THE COURT: I'm sorry. Here. Okay. You want  
22 to let him finish the answer, so the jury can hear it.

23 Go ahead.

24 MR. MCGINTY: Now, um, your Honor, I would  
25 move to admit this and I'd like to go through this with

1 the witness.

2 MR. BOOKBINDER: No objection.

3 THE COURT: The government has no objection?

4 MR. BOOKBINDER: Actually, this has already  
5 been marked, your Honor, as Exhibit 10, and we can use  
6 that version, if you'd like.

7 THE COURT: Oh, it's Exhibit 10?

8 MR. BOOKBINDER: Yes.

9 THE COURT: All right.

10 But it hasn't been admitted?

11 MR. BOOKBINDER: It's not been admitted.

12 THE COURT: All right.

13 Mr. McGinty, is there any problem with it being  
14 Exhibit 10?

15 MR. MCGINTY: No, your Honor.

16 (Hands up.)

17 Q. Mr. Hanshaw, I'm going to ask you --

18 MR. MCGINTY: Your Honor, is this on the  
19 screen?

20 THE COURT: It is -- well, let me put it this  
21 way, it should be.

22 (On screen.)

23 THE COURT: Now it is.

24 Q. Mr. Hanshaw, why don't you read your contribution to  
25 the post and I read Mr. Harris's reply.

1 A. All right. "Hi."

2 Q. I'm sorry?

3 A. I start off with "Hi."

4 Q. "Yes."

5 A. "I was wondering about becoming a forum moderator.  
6 I have experience."

7 Q. "I don't know you. You don't have every product  
8 from us."

9 A. "Your woman does know me."

10 THE COURT: Try to keep your voice up, please.

11 A. "She has taught me. I talked to Isabella and more.  
12 I have had solid forums helping members. I have helped  
13 numerous people. I go through forums every day and  
14 report back to you, among other things, who sends  
15 inappropriate posts. I give him a link and he delays  
16 steps, so I kind of had some experience with him."

17 Q. "Okay, I'll talk to him then."

18 A. "YourMomma: Okay. Thank you. Let me know what  
19 happens. Thank you for your time. Hi. Hi. Hey. Hi,  
20 DerEngel."

21 Q. "Yes."

22 A. "It's me. I was wondering what was happening with  
23 me becoming a moderator."

24 Q. "I told you I'm not looking for new moderators."

25 A. "Okay. DerEngel, do you want a separate version of

1 TCNISO \$10 a month? Hi."

2 Q. (Pause.) You testified that you would go onto the  
3 forums and you'd use different names. Do you remember  
4 saying that?

5 A. Yes.

6 Q. That you didn't just use the name "DShocker"?

7 A. No.

8 Q. Do you remember telling the agents, on January 24th,  
9 2012, in an interview with them, that when you chatted  
10 in surfboard or posted on the TCNISO forums, you did so  
11 as "DShocker." Do you remember telling them that?

12 A. I had done so as "DShocker."

13 Q. But do you remember telling them that when you  
14 posted, that you posted in the name "DShocker"?

15 A. Yeah.

16 Q. And -- are you aware that in search of the forums,  
17 there are no posts for DShocker?

18 A. They were probably removed.

19 Q. Removed. And the reason they were removed was  
20 because you were banned from the forums, am I right?

21 A. You're right.

22 Q. And you were banned because Brian Harris didn't like  
23 you, did he?

24 A. I wouldn't imagine so.

25 Q. Right. And the Nathan who communicates, asking to

1 be moderator, doesn't identify himself as the DShocker  
2 who is trying to get on the forum, am I right?

3 A. Um, I believe later on he did know who I was because  
4 I was in communication -- I caused communication with  
5 employees of TCNISO who -- and I used the nickname  
6 "DShocker" associated with my e-mail that I communicated  
7 to him on.

8 Q. You never associated your name with the name  
9 "DShocker," isn't that the case?

10 A. I don't recall, but I know my -- when I communicated  
11 with him on MSN Messenger, I used "Nate57@hotmail.com",  
12 and people knew I was "DShocker" on that e-mail.

13 Q. Did they know that you were Nathan Hanshaw?

14 A. Nobody knew my full name, no.

15 Q. No one knew your full name ever, am I right?

16 A. You're right.

17 Q. And that's because it took the police a calendar  
18 year and more to find out who the guy was that was  
19 swatting, who was committing the crimes you were  
20 committing, isn't that right?

21 A. Yes --

22 Q. Isn't that true?

23 THE COURT: No, he was answering the question.

24 A. Yes, that's true because of the anonymity of the  
25 modem.

1 Q. Did the government ever suggest that you answer a  
2 question that way?

3 A. No.

4 Q. All right. Um, in the eight-odd meetings that you  
5 had with the government, did they ever tell you that the  
6 capability of anonymity in this modem is going to be an  
7 important part of this trial?

8 A. No, I knew that, myself, the modem allowed me  
9 anonymity and that's why -- that's the main reason I  
10 used it.

11 Q. So when you just contributed the thought that the  
12 modem attributes anonymity, that's not because, um, you  
13 think that contributes to the government's case, do I  
14 understand that right?

15 A. Yes.

16 Q. Now, Mr. Harris had a contentious relationship with  
17 you, did he not?

18 A. Yes.

19 Q. That's with the "DShocker" who never said who he  
20 was, am I right?

21 A. Yes.

22 Q. But he didn't like you, right?

23 A. No.

24 Q. He hated you, right?

25 A. I would imagine.



1 Q. Did Craig Phillips ever say that Ryan Harris called  
2 you an "idiot"?

3 A. Um, I don't recall.

4 Q. Did Craig Phillips, in his communications with you,  
5 ever tell you that Harris didn't want Phillips  
6 communicating with you. Did he ever say that?

7 A. Could you repeat the question?

8 Q. Did Phillips ever say to you that Harris didn't want  
9 Phillips communicating with him?

10 A. I don't believe so.

11 Q. Now, you were communicating with Phillips via MSN,  
12 right?

13 A. Yeah, via MSN.

14 Q. Okay. And MSN, unless you block the logging  
15 feature, permits the recording of chats, am I right, it  
16 logs them?

17 A. Yes.

18 Q. So if -- so your testimony is that you had many  
19 chats, daily chats with Mr. Phillips, am I right?

20 A. Yeah.

21 Q. So these chats would be reflected both on your  
22 computer as the -- as one end of the chat, but also on  
23 Phillips's computer on the other end of the chat, am I  
24 right?

25 A. Um, not necessarily. Um, I didn't log and Phillips

1     may not have logged either. And there's also the  
2     possibility that he would delete the log.

3     Q. Now, Harris banned you from the forums about 30  
4     times, am I right?

5     A. No, I don't know how many times.

6     Q. It was a lot, wasn't it?

7     A. I wouldn't say it was 30 times.

8     Q. It was quite a number, right?

9     A. It was -- I'll give him at least three times.

10    Q. And you got even by hacking into the forum, am I  
11    right?

12    A. Um, I had gained, at one point, authorized access,  
13    yes.

14    Q. Even though Harris didn't want you to be there, am I  
15    right?

16    A. Right.

17    Q. Through Mr. Phillips you meet Isabella, right?

18    A. Right.

19    Q. And Isabella, or Becca, you started trying to --  
20    what shall we say, to work Isabella. You understand  
21    what I mean? You tried to get her to give you  
22    something, am I right?

23    A. I tried to build a rapport with her, yes.

24    Q. A rapport. And the rapport wasn't because you liked  
25    her, it was because you were trying to get something

1 from her, right?

2 A. Um, I liked her, too, but that was also a part of  
3 it, yes.

4 Q. All right. And what you wanted from her was the  
5 code for Sigma, am I right?

6 A. You're right.

7 Q. And you started chatting with her privately, right?

8 A. Yes.

9 Q. On the Internet Relay Chat, right?

10 A. Yes.

11 Q. You were trying to work her so she would give you  
12 that code, am I right?

13 A. Right.

14 Q. She gave you, for free, the TCNISO code?

15 A. I received multiple copies of TCNISO code.

16 Q. And when you say "multiple copies" of this, you, at  
17 some point, showed her partial code of Sigma, right?

18 A. I don't recall. I may have.

19 Q. Do you remember showing her partial code to try to  
20 persuade her to give you the rest of the code. Do you  
21 remember that?

22 A. I don't recall it.

23 Q. Do you remember saying to her that if she did that,  
24 you would give her \$100?

25 A. Um, I don't recall.

1 Q. Do you remember that she paid you \$100 -- or you  
2 paid her \$100 for that code, do you remember?

3 A. No.

4 Q. Do you remember blocking the payment so she wouldn't  
5 get the \$100 that you promised?

6 A. No.

7 Q. None of that?

8 A. No.

9 Q. That you cheated her. Do you remember that?

10 A. No.

11 Q. (Pause.) You chatted with her and you chatted with,  
12 um, Watts -- your testimony is you chatted with them on  
13 Surfboard, right?

14 A. Um, in private messages.

15 Q. But you also chatted with them on Sidney Wonderland,  
16 didn't you?

17 A. Sidney Wonderland was a theme park in Australia, I  
18 believe, that Chris Watts was telling me about. They  
19 had gotten them shut down or it was due to be shut down.

20 Q. All right. And you had a chat capability, you told  
21 the agents, through Sidney Wonderland?

22 A. Sidney? I'm not sure what you're --

23 Q. Through Pound Sidney Wonderland.

24 A. I think there might be some misinformation because  
25 Sidney Wonderland was a theme park in Australia, I

1 believe, that Watts was telling me about. Again, I  
2 communicated with Watts on a personal level. And he was  
3 telling me about Sidney Wonderland, what a theme park it  
4 was, and that it was being shut down, and he had a say  
5 about Sidney Wonderland.

6 Q. Now, um, you got access to Isabella's site,  
7 "blea.ch," correct?

8 A. That's correct.

9 Q. And on there she had documents and programs that she  
10 had created, correct?

11 A. Yes.

12 Q. And that included Sigma?

13 A. Um, I don't recall if it had Sigma on it.

14 Q. And did she give you the access to that or did you  
15 hack that?

16 A. I don't recall.

17 Q. She maintained a site at "ble.ch.lind," do you  
18 remember that site?

19 A. "Blea.ch" --

20 Q. -- ".ch/lind"?

21 A. It's something similar to that, but, yeah, I  
22 remember it, the "blea.ch."

23 Q. She kept program files on that site, didn't she?

24 A. Um, I believe so.

25 Q. And you hacked that, too, didn't you?

1 A. Um, I don't believe I hacked it. Um, I believe I  
2 actually might have got that information from one of her  
3 public websites that linked to that. I don't exactly  
4 recall how I got access to that.

5 (Pause.)

6 THE COURT: Mr. McGinty, I'm not trying to cut  
7 this off, but could you give me an estimate, though, of  
8 about how much longer you think you have with  
9 Mr. Hanshaw?

10 MR. MCGINTY: I think not more than 10  
11 minutes.

12 THE COURT: Okay. Go ahead.

13 Q. Um, Mr. Hanshaw, at some point you pled guilty to a  
14 charge in federal court, am I right?

15 A. Yes.

16 Q. And the document was called an "information,"  
17 correct?

18 A. Yes.

19 Q. But you understood the information to be the charge,  
20 am I right?

21 A. Um, yes, it's what I allegedly did.

22 Q. All right. And in the information you pled guilty  
23 to, um, computer fraud?

24 A. No, I pled guilty to juvenile delinquency in  
25 relation to computer fraud.

1 Q. Okay. So you pled to -- you acknowledged  
2 delinquency in connection with certain kinds of charges,  
3 am I right?

4 A. Yes.

5 Q. So among the charges that you had pled guilty to  
6 were charges that related to computer fraud, am I right?

7 A. Yes.

8 Q. Also wire fraud, am I correct?

9 A. Yes.

10 Q. Now, the wire fraud charges that you pled guilty to  
11 related to a wire transmission from New Hampshire to  
12 Worcester to Seattle in connection with falsely-  
13 reporting a violent crime, am I right?

14 A. I don't know where New Hampshire is?

15 Q. You were communicating by telephone call -- I'm  
16 sorry.

17 A. I think you might be taking my initials.

18 Q. I'm sorry. I'm thinking "NH" is New Hampshire, but  
19 "NH" is "Nathan Hanshaw"?

20 A. Yes.

21 Q. This is a call from Worcester to Seattle that  
22 falsely reported a violent crime, am I right?

23 A. Yes.

24 Q. That was the hacking incident -- that was the  
25 spoofing incident we talked about a short time ago?

1 A. Yes.

2 Q. Um, there was a telephone call from you to Georgia  
3 also reporting a swatting?

4 A. Yes.

5 Q. There was a use by you of a credit card for an  
6 on-line purchase of a Sony P3, or a PS-3, correct?

7 A. That's correct.

8 Q. And also you got a credit card for an on-line  
9 purchase of a spoof card?

10 A. Yes.

11 Q. And those were the four charges that related to wire  
12 fraud, am I right?

13 A. Yes.

14 Q. And finally you had a charge of interstate threats,  
15 am I right?

16 A. Yes.

17 MR. MCGINTY: Um, I'm going to move to admit  
18 the information.

19 THE COURT: Is there any objection?

20 MR. BOOKBINDER: No.

21 THE COURT: The next number is?

22 THE CLERK: 34, Judge.

23 THE COURT: It is admitted as Exhibit 34.

24 (Exhibit 34, marked.)

25 Q. Now, in exchange for your cooperation, you got a



1 recommendation to an 11-month committed sentence, am I  
2 right?

3 A. That's correct.

4 Q. That packaged together all the instances of  
5 swatting, right?

6 A. Yes.

7 Q. All the penetrations into ISPs' internal security  
8 systems, correct?

9 A. Yes.

10 Q. Your credit card violations, am I right?

11 A. Yes.

12 Q. All in all a pretty sweet deal, would you say?

13 A. It was a good deal, but you have to remember that  
14 juvenile charges are different from adult charges.

15 Q. And, um, one of the things you were supposed to do  
16 as a condition of your cooperation with the government  
17 is not commit any further crimes, isn't that true?

18 A. Um, that's correct.

19 Q. You were stopped by police on December 30th, 2011,  
20 were you not?

21 A. I was.

22 Q. You were in a car not your own, am I right?

23 A. You're right.

24 Q. When you were questioned by the police, what name  
25 did you give?

1 A. Mike Grant.

2 Q. Mike Grant. Is that your name?

3 A. No.

4 Q. You lied to them, didn't you?

5 A. I did. I had an anxiety attack.

6 Q. (Laughs.) I'm sorry. An anxiety attack  
7 precipitated you giving your name as Michael Grant?

8 A. Yeah, it's on record, I have a medical condition of  
9 anxiety, I take medication for it, and even while I'm in  
10 custody I take medication for it, and at the time I  
11 wasn't taking my medication, and I knew that -- um,  
12 after I did it, that I messed up and I gave them my real  
13 name.

14 Q. And, um, you are currently in custody, correct?

15 A. Yes.

16 Q. Serving a committed sentence for your violations?

17 A. I am.

18 MR. MCGINTY: A moment, your Honor?

19 THE COURT: Yes.

20 (Pause.)

21 MR. MCGINTY: I have no further questions of  
22 this witness.

23 THE COURT: Is there redirect?

24 MR. BOOKBINDER: Just briefly, your Honor.

25

1 REDIRECT EXAMINATION BY MR. BOOKBINDER:

2 Q. Mr. Hanshaw, Mr. McGinty asked you about, um,  
3 whether you got modems from a variety of different  
4 places. Do you remember those questions?

5 A. Yes.

6 Q. And is it fair to say that you didn't actually buy  
7 or get any physical modems from TCNISO?

8 A. I would say so.

9 Q. You got them from different sources out there?

10 A. That's correct.

11 Q. And, um -- and then once you had them, did you  
12 modify them?

13 A. Yes.

14 Q. And what software did you modify them with?

15 A. Sigma.

16 Q. The Sigma software, um, that you used, that you  
17 modified those modems with, where did you get that Sigma  
18 software?

19 A. The TCNISO website.

20 Q. It wasn't some hacked version of Sigma you got  
21 somewhere else?

22 A. No, it was a legitimate version.

23 Q. In, um, the chat with Mr. Harris that Mr. McGinty  
24 showed you, um, you had some discussion about work that  
25 you were doing with Craig Phillips, do you remember

1       that?

2       A.   Yes.

3       Q.   Can you describe what that was?

4       A.   Um, Phillips, um, was expressing to me that it was  
5       becoming increasingly harder to overcome Roadrunner  
6       security to get on-line for free and uncap and we were  
7       -- and he asked me to assist him in trying to figure out  
8       a way to do such.

9       Q.   Did you also help him in some way with the forums,  
10       the TCNISO website forums?

11       A.   Um, sometimes I would go on there and find links  
12       that were set up that way, um, that would damage the  
13       reputation of TCNISO or Phillips himself, and give him  
14       the links back to when they were posted.

15       Q.   Were there other kinds of matters -- well, let me  
16       strike that.

17               During the chats you had with Mr. Harris, did he  
18       ever tell you to stop using his products?

19       A.   No.

20               MR. BOOKBINDER:   No further questions.

21

22       RE CROSS-EXAMINATION BY MR. MCGINTY:

23       Q.   When you talked about Max Fraud to the agents, you  
24       were talking about having gotten modified modems from  
25       them, did you not?

1 A. From Max Fraud? I don't recall if I got modified  
2 modems from them because Max Fraud was a, um --

3 Q. I'm asking you simply whether you told them that you  
4 had gotten modified modems from Max Fraud?

5 A. I don't recall.

6 MR. MCGINTY: No further questions.

7 THE COURT: Okay.

8 Mr. Hanshaw, your testimony is complete. You're  
9 going to go out when the jury goes out.

10 May I see counsel at sidebar.

11

12 AT THE SIDEBAR

13 THE COURT: Okay. Once I decide the issues  
14 with regard to the agents, how long do you think the  
15 testimony of each of them will take?

16 MR. BOOKBINDER: I think Mr. Russell would be  
17 45 minutes maybe.

18 MS. SEDKY: And 15 minutes for Mr. Ryan.

19 THE COURT: So about an hour. I'm trying to  
20 decide whether I should keep the jury here. Because if  
21 we're not going to finish today, then I'd be inclined to  
22 send them home and just finish the last two witnesses  
23 tomorrow. I've got some other things pressing on me.  
24 Even if there's a chance we could finish today, I don't  
25 think I'm going to have them back until Wednesday

1        anyway, because we have some serious Rule 29 issues and  
2        we need to talk about the jury instructions. So I think  
3        I'm going to send them home.

4                I want to raise some issues and I want to talk to  
5        my law clerks about one of them first, a most recent  
6        one, and so I'm going to send them home. We're going to  
7        resume at about quarter to 12:00 and I'll give you some  
8        guidance for tomorrow. Tomorrow we'll finish the  
9        witnesses and move into the other matters.

10              All right?

11              MR. BOOKBINDER: Yes.

12

13              (In open court.)

14              THE COURT: Ladies and gentlemen, there are  
15        two more witnesses, um, but there are matters that I  
16        have to rule on relating to their testimony, some of  
17        which were only raised last night, and, um, I don't know  
18        whether we would -- um, I don't think we'd -- that I  
19        would be able to do that and finish both witnesses  
20        today, in any event, and you'll have to come back  
21        tomorrow. So if you don't mind, I'm going to send you  
22        home early today and you'll come back tomorrow at 9:00  
23        and I expect we'll finish the evidence -- I expect, but  
24        I don't promise, and you'll probably also go home early,  
25        and then I'll have you back on Wednesday for the

1 arguments, my jury instructions, and to at least begin  
2 your deliberations. So for planning purposes you should  
3 plan to be here Wednesday afternoon and then, if  
4 necessary, continue your deliberations on Thursday.

5 It continues to be important that you keep an open  
6 mind, don't discuss the case among yourselves or with  
7 anybody else, don't read or watch or listen to anything  
8 about the case that may be in the media, don't  
9 communicate about the case through any social media or  
10 on the internet, and keep up your great record of coming  
11 back promptly. I hope we'll start right at 9:00  
12 tomorrow, but if not, that's because we're working. All  
13 right?

14 The Court is in recess for the jury.

15 (Jury leaves, 11:20 a.m.)

16 THE COURT: You may be seated.

17 Mr. Hanshaw, you're excused. Thank you. We'll be  
18 in recess until about quarter to 12:00.

19 The Court is in recess.

20 (Recess, 11:20 a.m.)

21 (Resumed, 12:15 p.m.)

22 THE COURT: All right. Like most things, that  
23 took me longer than I had hoped. But I'll tell you my  
24 present thinking with regard to Exhibit 25 and Agent  
25 Ryan's proposed testimony. And this analysis is based

1 largely but not exclusively on discussion in **Milkowicz**,  
2 which is 470 F.3d 390 at 397, a case that I brought to  
3 the parties' attention several weeks ago before trial.

4 It's my current view that the GoDaddy, and other  
5 records, must be admissible before Special Agent Ryan  
6 can testify about them and before the proposed chart,  
7 that's been premarked as Exhibit 25, can be admitted  
8 under Rule 1006, as a summary, or under Rule 611(b) as a  
9 chalk. Authenticity is an element of admissibility.

10 The First Circuit wrote in **Milkowicz**: "Evidence  
11 admitted under Rule 1006 must be otherwise admissible  
12 and remain subject to usual objections under the Rules  
13 of Evidence." In 31 "Wright & Gold," as it's now known,  
14 Federal Practice and Procedure, Section 8043, the  
15 treatise states: "Most notably, Rule 1006 evidence  
16 normally is objectionable if the voluminous source of  
17 material on which it is based is admissible." "Even  
18 where 1006 evidence is relevant and authentic, the Court  
19 has the discretion to exclude the evidence where its  
20 probative value is substantially outweighed by unfair  
21 prejudice or other Rule 403 dangers."

22 In **Milkowicz**, the First Circuit wrote, at 397: "A  
23 summary chart used as a pedagogical device must be  
24 linked to evidence previously admitted and usually is  
25 not itself admitted into evidence." So that



1 communicates to me a kind of common-sense consideration  
2 that Mr. Ryan cannot give an oral summary of information  
3 or make calculations based on GoDaddy records, for  
4 example, unless they're admissible. If the evidence is  
5 admissible, it need not actually be admitted, as the  
6 First Circuit noted in **Milkowicz** at 397, also.

7 It appears to me that the GoDaddy and other  
8 records -- if there are others in dispute, may be  
9 admissible as business records under Rule 8036, however  
10 it would be necessary for a custodian to appear and  
11 testify because as far as I know there was no  
12 certification of those records, those business records  
13 provided before trial, as required by Rule 902(b)(11).

14 So in my current conception the government could  
15 call recordkeepers tomorrow and seek to establish the  
16 admissibility of the documents, but absent that I don't  
17 see how the -- I don't see a proper basis for letting  
18 Agent Ryan testify to the information in Exhibit 25 or  
19 show it to the jury.

20 Do the parties want to be heard on that analysis?

21 MR. BOOKBINDER: Your Honor, could we just  
22 have a moment?

23 THE COURT: Yes.

24 (Pause.)

25 MR. BOOKBINDER: Your Honor, in light of that

1 I think we will, um -- we will use the number that's on  
2 the PayPal reference, that 750,000 figure that document  
3 is stipulated to, and we won't use Exhibit 25. And  
4 we'll have to discuss how this may limit -- well, there  
5 probably will be some brief testimony from Special Agent  
6 Ryan about that PayPal record. Um, I don't know whether  
7 there's anything else we'll do, but it will certainly  
8 shorten his testimony, that wasn't going to be that long  
9 to start.

10 THE COURT: Okay. And I think that's what you  
11 were advocating, Mr. McGinty, right, reliance on the  
12 stipulated PayPal?

13 MR. MCGINTY: Yes, your Honor.

14 THE COURT: Okay.

15 Then let's -- well, who is going to seek to  
16 introduce the statements by Mr. T and MooreR?

17 MR. BOOKBINDER: Those would be with Special  
18 Agent Russell.

19 THE COURT: Okay. Then perhaps it would make  
20 sense to go through specifically what your proposed --

21 MR. BOOKBINDER: Yes, your Honor.

22 THE COURT: Okay. Hold on just one second.

23 (Pause.)

24 THE COURT: Because I think, when I did my  
25 original analysis -- well, there are a couple of

1 things. I mean, the general principles, I think, are to  
2 conditionally admit it, but at this point I'm really not  
3 conditionally admitting it, it's the last witness and if  
4 there's not enough, then there's not enough. I'd have  
5 to, myself, be satisfied, by a preponderance of the  
6 evidence, that the statements were made in furtherance  
7 of a conspiracy with Mr. Harris. It doesn't necessarily  
8 have to be the conspiracy charged in the indictment, the  
9 cases that indicate that include **Marino**, 277 F.3d 11 at  
10 26 to 26, in **Amoratti**, 996 F.2d 456 at 486 and Note 12,  
11 in **Dworkin**, 855 F.2d 12 at 24, but there has to be some  
12 conspiracy between Mr. Harris and the speaker and the  
13 statement has to be in furtherance of the conspiracy.

14 I can consider -- that there has to be some  
15 independent extrinsic evidence to corroborate -- well,  
16 to contribute to the conclusion that this statement is  
17 admissible under Rule 801(d)(2)(E) or at least that it's  
18 made by a member at a time when he was a member of the  
19 conspiracy.

20 So those are the general rules. To some extent,  
21 in my earlier analysis, I've relied on statements in the  
22 trial brief as to what the government, at that time,  
23 expected its evidence would be and the government, I  
24 think, told me before trial, after the trial brief, and  
25 as far as I know it reiterates today, that contrary to

1     what was in its trial brief, it has not presented  
2     testimony by Phillips, Lindquist, or Hanshaw that Mr. T  
3     is friends with the defendant, was a reseller of  
4     TCNISO's equipment, and was a regular participant in the  
5     company's website forums where activities relating to  
6     the alleged conspiracy, like trading MAC addresses and  
7     configuration files, were routinely carried out.

8             You will remind me if I've overlooked anything or  
9     basically I should disregard --

10            Has there been any evidence on any of those  
11     points?

12            MR. BOOKBINDER: No, your Honor, and that's  
13     why we said we would rely on Mr. Harris's own  
14     statements.

15            THE COURT: All right. So that's helpful.  
16     That clarifies that.

17            Then on Page 15 of the government's memorandum in  
18     support of its motion in limine, Document 94, there is a  
19     discussion of Mr. T's statements and then I think it  
20     went on to the MooreR statements.

21            These become issues with Russell, correct?

22            MR. BOOKBINDER: Yes.

23            THE COURT: All right. As I understand it,  
24     there's no objection to Exhibit 2, the website screen  
25     shots.

1           Exhibit 3 -- I have a revised exhibit, I think,  
2     right?

3           MR. BOOKBINDER: Yes, your Honor, over the  
4     weekend we revised it.

5           THE COURT: Right. And these are TCNISO  
6     website forum indices.

7           And the defendant wants these excluded, correct?

8           MR. MCGINTY: That's exactly right, your  
9     Honor.

10          MR. BOOKBINDER: My understanding is that he  
11     does not object to the first two pages, but does to the  
12     remaining.

13          MR. MCGINTY: That's correct. The entire  
14     exhibit is six pages. The first two, there's no  
15     objection, but we're objecting to Pages 3 through 6.

16          THE COURT: All right. That's --

17          Why does the government feel these are admissible?

18          MR. BOOKBINDER: Well, your Honor, what we've  
19     done in redactions is we've -- in light of the Court's  
20     -- our past discussion about this, is we've taken out,  
21     um, what are assertions, someone saying, "I have this  
22     program" or "I have MACs that I'm looking to trade," for  
23     example, and what we've left are two categories of  
24     topics. And the first thing to point out are these are  
25     topic headings and if -- what the testimony would be is

1 if you click on one of these, then you get a string of  
2 posts about that topic. So these are topic headings.  
3 Some of them, though, as the Court pointed out, include  
4 statements and assertions of some kind. We've taken  
5 those out.

6 So what we have left here are general headings  
7 like the first one, "Cablevision," that's an ISP, um,  
8 and "Charter" is the next one, um, and "BPI Plus Cox,"  
9 "Las Vegas Cox," is another ISP. And the next one,  
10 "Comcast MAC Trading." Again, these are topic  
11 headings. I suggest they're not assertions of one kind  
12 or another. And then some of them are questions like,  
13 down a couple of -- um, after the redaction is, "Anyone  
14 want to trade MACs?" Um, that's a question, it's not an  
15 assertion.

16 So I'd suggest those are admissible because they  
17 simply fall outside of hearsay. They are -- they're  
18 either a topic or they're a question and therefore are  
19 not admitted for the truth of any assertion made. And  
20 they're relevant, um, to -- to the way that the forum is  
21 operated, to what was on the topics that people were  
22 discussing, and to Mr. Harris's knowledge that people on  
23 there were -- um, that there were topic areas where  
24 people were asking or inquiring about trades and there  
25 were other topic areas that were organized by ISP, and

1       again those are --

2               THE COURT:   What is the evidence that  
3       Mr. Harris would have seen these?

4               MR. BOOKBINDER:   He is the -- well, we've had  
5       testimony from both Mr. Phillips and Ms. Lindquist that  
6       Mr. Harris ran the website, controlled the website, in  
7       fact we had some of the posts we went through with  
8       Mr. Phillips, I believe, where someone is asking to get  
9       access to the website and it's -- and Mr. Phillips is  
10      saying, "You need to activate this person," and  
11      Mr. Harris does it, he says "Activate it."   And there's  
12      one of the chats, actually the first one with Mr. T,  
13      where he says specifically that, "Can you add me to the  
14      website member section?" and DerEngel says essentially  
15      "Don't," ultimately "Here's your log in with your  
16      password, it's done."

17              So we've got several different forum testimony,  
18      we've got chats, we also have the, um -- I believe this  
19      is to go into the one GoDaddy record that is the sort of  
20      subscriber information, I don't think there's an  
21      objection to that, I think it's Exhibit 31.   It is  
22      Exhibit 31.   And that shows that the domain name,  
23      "TCNISO.net," was billed to Ryan Harris.

24              THE COURT:   And what are these documents  
25      relevant to?

1 MR. BOOKBINDER: The topic -- this portion of  
2 Exhibit 3, your Honor?

3 THE COURT: Yes.

4 MR. BOOKBINDER: They're relevant to two  
5 things. First of all, to show that, again, on  
6 Mr. Harris's website there are topics dedicated to  
7 people asking about trading MACs --

8 THE COURT: But I'm trying to sort this out  
9 because I have a growing sense of whether the conspiracy  
10 charge is going to get to the jury and I'm skeptical,  
11 although you'll get to argue it. Um, but if it's only  
12 relevant to -- and I thought maybe this was relevant to  
13 the interdependence aspect of proving the rim of the  
14 alleged conspiracy, and if I'm satisfied that that's not  
15 going to be proven -- I mean, that conspiracy is not  
16 going to be proven or a conspiracy charged in the  
17 indictment is not going to be proven, um, that it raises  
18 some interesting issues about the difference between a  
19 variance and a constructive amendment. And I can give  
20 you some more cases to read, although you're supposed to  
21 be giving them to me.

22 Um, the -- is this relevant to the wire fraud  
23 charge if there's no conspiracy charge?

24 MR. BOOKBINDER: Your Honor, so I think you  
25 understand what our assertion is, it's the conspiracy



1 charge and --

2 THE COURT: Is that what it is really?

3 MR. BOOKBINDER: No. No. No.

4 THE COURT: Well, what is your assertion on  
5 conspiracy?

6 MR. BOOKBINDER: Oh, sorry. As to the  
7 conspiracy charge, yes, certainly there's -- well, it  
8 shows two things. One, it does show interdependence  
9 that people are asking each other about trading MAC  
10 addresses, for example, they're posting to each other  
11 about different IPS. So that there's interdependence.  
12 There's also -- again it goes to Mr. Harris's knowledge  
13 and this, I'd suggest, is relevant both to the  
14 conspiracy and to wire fraud that he, um, clearly needs  
15 to at least know, um, and intend to assist his customers  
16 under both conspiracy and wire fraud.

17 THE COURT: Well, for wire fraud -- you see, I  
18 think that the burden may be less on you for wire  
19 fraud. I've long thought that was, to be colloquial,  
20 your "cleaner shot," but --

21 MR. BOOKBINDER: I suggest that that's true,  
22 your Honor. I agree.

23 THE COURT: You know, if he had to have  
24 devised or participated in a scheme to defraud and had  
25 known or reasonably foreseen that the wires would be

1       used in executing the scheme -- although I don't expect  
2       I'm going to hear him testify that he had to know about  
3       a particular use -- you know, a use by a particular  
4       person if it was foreseeable. And there are cases on  
5       this.

6                 MR. BOOKBINDER: Right.

7                 THE COURT: So, you know, in exchanging MACs,  
8       it is evidence of a scheme, but it's not an essential  
9       element as it is to some extent on the conspiracy  
10      charge.

11                MR. BOOKBINDER: That's absolutely right, your  
12      Honor. But I would suggest it's still certainly  
13      relevant to what he intended the products to be used for  
14      and what his scheme was.

15                THE COURT: And your claim is that these are  
16      not hearsay because, whether they're true or not, they  
17      would be statements -- like "Anyone want to trade MACs,"  
18      these questions are usually not hearsay, which would  
19      lead him to know or believe that people were using his  
20      devices in connection with traded MACs to steal internet  
21      service.

22                MR. BOOKBINDER: Absolutely. There's  
23      testimony from both Mr. Kohler and Mr. Brodfuehrer that  
24      there's no other reason to trade MACs and that this is  
25      evidence that people are -- it may not be dispositive,

1 but certainly asking and inquiring about MACs. I mean  
2 -- and the names of the ISPs is certainly relevant to  
3 the question of what people are doing with his products.

4 THE COURT: All right.

5 And, Mr. McGinty, what do you say?

6 MR. MCGINTY: Your Honor, first of all, if we  
7 could just back up to the prior page. The way this is  
8 structured is that TCN has forums, the forums are set  
9 out on the first page which indicates what the topics  
10 are for the particular forum and who the moderators are  
11 for that forum. The 03-03 page, the first of the pages  
12 that we are objecting to is within the DOCSIS forum,  
13 which is the forum on Page 1, um, the fifth forum down.  
14 And so when a person gets on the DOCSIS forum, they can  
15 invite a conversation about the subject.

16 For example, I can invite a conversation about the  
17 subject -- I don't know, "Cablevision." There it is.  
18 And the Cablevision heading is saying, in effect, "I  
19 will be talking about Cablevision." So the  
20 parenthetical there, the statement there is, "I will be  
21 talking about Cablevision," and parenthetically, "Is  
22 anybody else interested in talking about Cablevision?"  
23 The government says it's not admitted for the truth of  
24 the matter. The defense says that the topics are  
25 dedicated to people talking about -- they said MACs,

1 Cablevision, whatever the topic is. And a way of  
2 framing it that frames it exactly as we do, um, the  
3 statement of what the topic is is a simple declarative  
4 sentence of what the content is and it's being offered  
5 for the truth of the matter. Were it not that, the  
6 government wouldn't be offering this.

7 So the first topic here is "Cablevision" and the  
8 statement is "I will be talking about Cablevision,"  
9 offered for the truth of the matter. Now, what's  
10 interesting about each of these is hearsay generally  
11 doesn't have a Trojan Horse component to it, but this  
12 does. So with Cablevision, um, you look to the right  
13 and see that no one was interested in replying to  
14 "Cablevision." So the tree fell in the woods and no one  
15 heard about it. So the first topic "Cablevision," um,  
16 evoked nothing but silence. Apparently there were 19  
17 views, people looked at it and went (Yawns.) and nobody  
18 contributed to the subject.

19 If we move down, the fourth one that's here,  
20 "Comcast MAC trades," the simple sentence is, "I will be  
21 talking about MAC trades," and the Trojan Horse  
22 component of this is, if we go to "Replies," 27, if we  
23 goes to "Views," 5136, the back door effect of this is  
24 the -- the, um, sort of the tail wagging the dog, of  
25 there were 5136 people who were interested in the

1 subject and there were 27 people who actually commented  
2 on it.

3 So I don't know how this is not offered for the  
4 truth of the matter. I would note that the moderator is  
5 not Harris. Um, I would note that the creation of the  
6 topic is the creation of the individual who suggests the  
7 topic and begins that thread. So with "Comcast," it  
8 would be "Routy," a person we don't know anything  
9 about. So "Routy" comes on there and says, "I want to  
10 talk about Comcast MAC trades" --

11 THE COURT: Where do you see that?

12 MR. MCGINTY: So it's "Comcast MAC trade,"  
13 then right under it it says "By Routy."

14 THE COURT: Oh, I see. Yes. Yes.

15 MR. MCGINTY: So "By Routy."

16 So apparently Routy, interested in talking about  
17 this, um, posts a header, the header is "Comcast MAC  
18 trade," and he invites a string of comment, "Does anyone  
19 want to talk about this?" He gets it started. It's  
20 under the egis of the moderator, but the moderator is  
21 the moderator of the forum which is now conclusive of a  
22 potential string chat created by that Routy fellow. And  
23 Routy's chat, his conversation then, either germinates  
24 other things or, as with "Cablevision," germinates  
25 nothing.

1           So the "Comcast MAC trades" is a combination of  
2     the obvious statement, that "I am you talking about  
3     Comcast MAC trades," as well as 5136 people who are  
4     interested in that topic. So Harris wasn't the  
5     moderator, Phillips never said that he saw this at any  
6     time, that he could verify "This is the way it looked."  
7     At the time this is offered and we look now to these --

8           THE COURT: All right. I think, given the  
9     limits on time, that's enough, but at the moment -- and  
10    I'll give you more definitive answers tomorrow, but at  
11    the moment I'm inclined to exclude this.

12           There's general jurisprudence that the question,  
13    "Does anyone want to trade MACs?" is not hearsay. I  
14    understand that. But even to the extent that that's  
15    true, I think this little -- I'd have to give the jury  
16    an instruction that none of this is offered for the  
17    truth as to whether anybody was trading MACs, it's for  
18    Mr. Harris's knowledge and belief. He's not the  
19    moderator of this. The primary probative value on this  
20    would be to show the interdependence of the named  
21    co-conspirators and at the moment -- although I'm  
22    interested in hearing from you, I'm leaning towards  
23    granting a Rule 29 motion on the conspiracy -- the  
24    conspiracy charged in the indictment, I'm inclined to  
25    find the jury could not find beyond a reasonable doubt,

1       um, with regard to anybody in Massachusetts.

2               If Hanshaw, given, you know, the testimony of  
3       Phillips, for example, saying that Harris said he was an  
4       idiot and Hanshaw's own testimony about how he kept  
5       getting kicked out, um, shows -- you know, would permit  
6       a finding that he intended to conspire, but I think it's  
7       not sufficient to prove beyond a reasonable doubt, even  
8       on view in the light most favorable to the government,  
9       that Mr. Harris agreed with Hanshaw to engage in wire  
10      fraud.

11             With regard to Madeira, for some reason his motive  
12      didn't require trading MACs, and the government didn't  
13      ask him any questions, that I can recall, about his  
14      frame of mind, which **Portella** makes important. You  
15      know, you have to be able to prove beyond a reasonable  
16      doubt to prove that he was in a conspiracy with the  
17      others in Massachusetts, as well as Harris, that he  
18      thought that the success of a venture by him, or his  
19      success in the venture, depended on the activities of  
20      others in addition to Mr. Harris. That's my current  
21      conception.

22             And Larosa didn't trade MACs. He drove from  
23      Dorchester to Roxbury to get his.

24             But interestingly, you know, it's possible you  
25      could prove or -- nevertheless prove a conspiracy with

1 Mr. Harris, you know, you would say one of them, Larosa  
2 or -- well, I don't know that there's enough to prove a  
3 conspiracy with either of them because I don't think  
4 there's any showing that Mr. Harris knew of their  
5 existence. He knew of Hanshaw's existence, but he  
6 wouldn't let him on the team. So it doesn't appear he  
7 can be proven to -- that he intended to agree with  
8 Larosa or with Madeira.

9 Then usually you get a variance, an impermissible  
10 or a prejudicial variance, one that's not permissible if  
11 something expands a conspiracy, it doesn't contract it.  
12 So I've been giving some thought to, um, whether, you  
13 know, a conspiracy between Lindquist, Phillips, and  
14 Harris, for example, could be prosecuted in  
15 Massachusetts and I know the FBI, I think in 2008,  
16 purchased something that was sent to Massachusetts, but  
17 by that time Phillips and Lindquist were out of the  
18 conspiracy. Unless I'm -- so that's my present thoughts  
19 about the conspiracy, why I'm analyzing most of this  
20 evidence on its probative value to the wire fraud  
21 charges, which doesn't require proof of the trading of  
22 MACs.

23 Is there other evidence that the jury's already  
24 heard about the trading of MACs?

25 MR. BOOKBINDER: Um, yes, your Honor,



1 Mr. Phillips testified that he traded MACs, um, as did  
2 Mr. Hanshaw, and I, um --

3 THE COURT: Well, let me ask -- put the  
4 question more precisely.

5 Is there evidence that Mr. Harris -- did Phillips  
6 provide evidence that Harris knew that MACs were being  
7 traded?

8 MR. BOOKBINDER: Well, um, your Honor, there  
9 is Harris's own post, which it's worth noting -- and I  
10 understand the Court's inclination on this Exhibit 3,  
11 but, um, in that same DOCSIS subheading that this topic  
12 list comes from, there is the --

13 THE COURT: Which exhibit?

14 MR. BOOKBINDER: So in Exhibit 3, these set of  
15 topics that we were just talking about is within the  
16 bigger heading "DOCSIS," D-O-C-S-I-S, and Mr. McGinty  
17 properly points out that Mr. Harris is not a moderator  
18 of that particular portion of the forums. However, he  
19 did post there.

20 THE COURT: Where is that?

21 MR. BOOKBINDER: If you look at Exhibit 22,  
22 you can see from the front page of Exhibit 22, which  
23 just has the headings.

24 THE COURT: So this one's going to come in.  
25 But actually, you see, this one, in my conception,

1 weighs against admitting Exhibit 3, not in favor,  
2 because the marginal probative value is diminished by  
3 the much more direct admissible evidence. He knows that  
4 these are being used to trade MACs, he says, "I'm  
5 checking up on something for a friend. Does anyone have  
6 any verified MAC addresses and/or config files for" --

7 MR. BOOKBINDER: Correct.

8 THE COURT: So you should proceed on the  
9 assumption that Exhibit 3 is out.

10 (Pause.)

11 THE COURT: Exhibit 4, the GoDaddy records.

12 MR. BOOKBINDER: Your Honor, we're not  
13 offering Exhibit 4.

14 THE COURT: Okay. So that's withdrawn.

15 (Pause.)

16 THE COURT: The GoDaddy ads on the Superbowl  
17 were so interesting that I was looking forward to seeing  
18 the custodian of the records.

19 MR. BOOKBINDER: I believe Danica Patrick's  
20 busy this week, so I don't think she could be here, but  
21 --

22 THE COURT: Well, I don't know who that is,  
23 but I'm sure it's connected.

24 Okay. Exhibit 7, no objection. Exhibit 13, no  
25 objection. Exhibit 14 -- Exhibit 14.

1 MR. BOOKBINDER: Your Honor, we're not going  
2 to be using Exhibit 14.

3 THE COURT: Okay, so that's withdrawn.

4 Exhibit 16, no objection. Exhibit 17. Now it's  
5 Mr. T as to which **Petrozziello** rulings -- so here,  
6 essentially I have to look and see whether the DerEngel  
7 statements sufficiently add to Mr. T's statements to  
8 persuade me, by a preponderance, that Mr. T was a  
9 co-conspirator.

10 That's the analytical framework, right?

11 MR. BOOKBINDER: Yes, your Honor. And in  
12 addition to the ones that are actually left in this  
13 exhibit, we'd be talking about the additional statements  
14 set down on Page 15 and 16 of our motion -- in support  
15 of our motion in limine.

16 THE COURT: All right.

17 (Pause.)

18 THE COURT: So okay. 16, let me get your  
19 motion, because I've done these before. It's on Page  
20 15.

21 All right. So Exhibit 17 is where in the original  
22 motion in limine?

23 MR. BOOKBINDER: Pages 15 and 16, your Honor.

24 THE COURT: Pages 15 and 16.

25 (Pause.)

1 THE COURT: Well, "Can you add me to the  
2 website" -- all right. Well, here, give me the  
3 argument, please, I know I've done this once before, but  
4 on Exhibit 17. What is it --

5 MR. BOOKBINDER: Sure, your Honor.

6 THE COURT: Remind me of the overall evidence  
7 that persuades me, by a preponderance, or that should  
8 persuade me that here in 2005 Mr. T was in a conspiracy  
9 with Harris and these statements were made in  
10 furtherance of it.

11 MR. BOOKBINDER: Okay. Your Honor, if you  
12 look at the chats that are on page -- particularly the  
13 ones on Page 16 of our motion in limine, essentially  
14 what's happening here is that Mr. T is asking Harris,  
15 "I'm wondering if you can give me commissions if I --  
16 I wonder if you could give me a commission or something  
17 like that if I get some people to uncap using TCNISO  
18 software/hardware?" And Harris responds in that  
19 initial, um, chat, "I'm sure we can work something  
20 out." And then in the second one, again, Mr. T says,  
21 "If you could arrange something, if I could refer people  
22 to you," well, how would the mechanics work,  
23 essentially? And Harris says, "Just refer them, you'll  
24 need to give me the order numbers," um, and the next --

25 THE COURT: Well, maybe I wrote this wrong, or

1 I read this wrong, but --

2 Is this on Page 16 of your motion?

3 MR. BOOKBINDER: It is, I'm looking at that  
4 one. I want to make sure you're looking at the right  
5 one. It's the memorandum in support of our motion in  
6 limine.

7 THE COURT: Yes, it's Number 094. Because I  
8 thought, on February 8th, you told me that this was  
9 withdrawn. Maybe I --

10 MR. BOOKBINDER: Well, we're not seeking to  
11 introduce --

12 THE COURT: Oh, but you want me to rely on  
13 them?

14 MR. BOOKBINDER: We want you to rely on them  
15 --

16 THE COURT: And I can.

17 MR. BOOKBINDER: Yes. It's also worth noting,  
18 your Honor, that it may be the case that for the three  
19 excerpts that we're actually offering, um, there are  
20 questions that Mr. T is asking to Harris. So it may not  
21 even be necessary to make a **Petrozziello** ruling and  
22 maybe we should start there.

23 THE COURT: All right. So the three are what  
24 numbers, 17?

25 MR. BOOKBINDER: It's Exhibit 17.

1 THE COURT: So what's the next one?

2 MR. BOOKBINDER: Um, they're all Exhibit 17.

3 THE COURT: Oh, you're talking about the  
4 statements in 17?

5 MR. BOOKBINDER: Yes.

6 THE COURT: All right.

7 And, Mr. McGinty, do you want to be heard? Why  
8 shouldn't I -- it wouldn't be the conspiracy charged in  
9 the indictment, in my present conception, but as I said,  
10 it can be any conspiracy, according to **Marino** and  
11 **Amorrati** or from **Count Dairy Silva**, you don't even have  
12 to have a conspiracy charged in the indictment.

13 MR. MCGINTY: Well, the government formerly  
14 had suggested that it would be some, um, dimension to  
15 Mr. T, right now he is only a name, we know nothing  
16 about him, we don't know whether he's got any  
17 acquaintance with anyone. The part that is not being  
18 admitted here for which the government suggests provides  
19 some context in this is an offer to do something by  
20 someone who is unknown, and the probity of that, um,  
21 doesn't seem very high. The part they're trying to  
22 glean goes like this --

23 THE COURT: Well, the real name isn't known,  
24 but, as I said, I think back on February 8th, I don't  
25 think that's at all fatal.

1           Go ahead.

2           MR. MCGINTY: Well, the Court ruled that it's  
3 not fatal to the admissibility, but for the jury to  
4 evaluate this and for it not to have a 403 effect, um,  
5 there has to be some dimension to Mr. T so that they  
6 understand what the nature of his contribution to the  
7 evidence is.

8           Now, the part that the government is offering on  
9 1701, um, is a question for Mr. T. If you take out the  
10 question, um, the Harris contribution is, "Yeah, what's  
11 your pass, done, login," and the name of the login. In  
12 other words, um, this provides, I suppose, some access  
13 to, um, a -- to the forums of TCNISO. There's nothing  
14 that is indicative of a conspiracy in letting a person  
15 into the forums. So I don't know what that's probative  
16 of.

17           The second page, um, the Court had considered this  
18 before and reserved judgment on it because -- I mean,  
19 again, in order for this thing to be meaningful, it has  
20 to be some sort of a conspiratorial agreement in part,  
21 and it's not necessarily a charge on there with some  
22 other conspiracy, and this isn't that.

23           THE COURT: Well, I think it is. Um, this I'm  
24 admitting. I'm persuaded, by a preponderance of the  
25 evidence, that Mr. T and Mr. Harris were in a

1 conspiracy, but not the conspiracy necessarily charged  
2 in Count 1, at the time this statement was made and  
3 these were statements in furtherance of it.

4 So as I think I said on February 8th, I've relied  
5 in part on the chat log from March 31, 2005 showing  
6 Harris gave Mr. T access to the forum, a chat log from  
7 April 20, 2005, which has not been admitted, showing  
8 Mr. T solicited commissions from the defendant finding  
9 people to buy modems and Sigma licenses on TCNISO.net, a  
10 chat log from July 10, 2005, which has not been  
11 admitted, where the defendant told Mr. T that he was  
12 sending him \$50 versus PayPal chat logs from March 31  
13 and from April 18, 2005, which the government does not  
14 seem to admit, showing Mr. T has been prosecuted for  
15 theft of services, and additional portions of the chat  
16 log are part of a chat log from April 20, 2005, which  
17 the government doesn't seek to admit, where Mr. T asked  
18 the defendant if he got feedback on whether Sigma was  
19 working for users in Quebec, so he could be sure that  
20 they'll work with him. Um, also a chat log from April  
21 20, 2005, which is not admitted, where Mr. T asked the  
22 defendant whether people with Sigma can get on line with  
23 MAC cloning or with a legitimate address.

24 So those are -- then there's independent  
25 nonhearsay corroborating that those statements are



1 admissible under 801(d)(2)(E), as required by **Portella**,  
2 167 F.3d at 703, and **Padro Burgos**, 239 F.3d at 75 to  
3 76. And some of them are right here in Exhibit 17.  
4 Mr. T is asking for a commission for selling the  
5 defendant's products and the defendant says, "I'm sure  
6 we can work something out." This is the defendant's own  
7 statements. Generally, in the chat logs, it indicates  
8 that Mr. T was acting as a broker for TCNISO and  
9 seeking -- and there's also abundant evidence in the  
10 case that the products, the modems sold by TCNISO, the  
11 software, were designed to be used to steal internet  
12 service, either to get it for free or to get premium  
13 uncapped service without paying for it. And while there  
14 are many statements of Mr. Harris's, and I haven't  
15 recited them all, but they persuade me, by a  
16 preponderance, that Mr. T is a co-conspirator.

17 So what's the next one?

18 MR. MCGINTY: If I might? The Court is  
19 suggesting a finding that this was built -- that this  
20 software was for a singular purpose. Um, I respectfully  
21 submit that the evidence is to the contrary.

22 THE COURT: All right, but I'm not telling the  
23 jury this. I find that this software and hardware was  
24 built to steal internet service. That's what I'm  
25 finding for present purposes, for **Petrozziello** purposes.

1 All right. What's the next exhibit that I need to  
2 rule on?

3 MR. BOOKBINDER: Your Honor, I don't believe  
4 that -- well, Exhibits 18 and 19 are just Harris's  
5 statements. I don't know whether there's any objection  
6 to those.

7 THE COURT: I think there is. Yeah, there  
8 were objections under 403 and 404(b), but these are  
9 intrinsic, as we've discussed before. So in 18,  
10 Mr. Harris says: "On September 13th, 2005, I created  
11 the entire cable modem hacking scene." That's a  
12 statement within the period of the conspiracy, it's an  
13 admission, it's admissible under Rule 801(d)(2)(A). So  
14 that's admitted. It doesn't even have to be within the  
15 period of the conspiracy, but it is. But that's not  
16 what I'm relying on because I can't see who is making  
17 the statement. Okay?

18 What's the next one?

19 MR. BOOKBINDER: 19, your Honor.

20 THE COURT: This is a chat with "X-Factor"?

21 MR. BOOKBINDER: Yes, but again it's just  
22 Harris's statement.

23 THE COURT: All right. So you're not asking  
24 me to make a **Petrozziello** ruling on X-Factor?

25 MR. BOOKBINDER: No.

1 THE COURT: Okay. This is June 21, 2005 and  
2 saying what he makes on advertising. So that's  
3 admissible, also. That's a statement of a party  
4 opponent.

5 What's the next one?

6 MR. BOOKBINDER: 20.

7 THE COURT: And Rule 403 doesn't exclude it.

8 MR. BOOKBINDER: This is a chat with somebody  
9 by the name "Shaggy," but again, um, it's Harris's  
10 statement. There is a question in the middle of it from  
11 Shaggy, but we're not asking for any **Petrozziello** ruling  
12 here.

13 THE COURT: DerEngel says: "I love Sigma, 230  
14 KB upload consistent." He's asked, "What did you do,  
15 flash the firmware on the modem at the hotel?" And the  
16 answer is, "I'm at Craig's now using his spare uncapped  
17 modem on RR."

18 "RR" is an ISP?

19 MR. BOOKBINDER: "Roadrunner," yes.

20 THE COURT: So the relevance of this is  
21 showing, "I'm using an uncapped modem." He knows.  
22 Okay, that's admissible.

23 MR. MCGINTY: And, your Honor, does that  
24 include the statement there of Shaggy, "What did you do,  
25 flash the firmware or modem at the hotel?" That's

1       unresponded to.

2               THE COURT:   Well, that's not hearsay because  
3       it's a question, um, but is there any problem redacting  
4       the question?

5               MR. BOOKBINDER:   Um, a minute, your Honor.

6               THE COURT:   Because I think Mr. McGinty is  
7       right, but the part you're interested in doesn't seem to  
8       be responsive to the question.

9               MR. BOOKBINDER:   Well, actually I think it  
10      is.   If the question is, "What did you do, flash the  
11      firmware on the modem at the hotel?"   The answer is "I'm  
12      impressed," so --

13              THE COURT:   Well, it's a question and there  
14      are cases -- that I don't have on the top of my tongue  
15      right now, that indicate that questions are not hearsay.

16              MR. MCGINTY:   Right, but it's a 403  
17      consideration.

18              THE COURT:   Given the way this -- no, the  
19      probative value of this -- it didn't have any context to  
20      make it intelligible.   It's not substantially outweighed  
21      by any risk of unfair prejudice.

22              So what's next?

23              MR. BOOKBINDER:   Exhibit 21, your Honor.

24              THE COURT:   This is MooreR?

25              MR. BOOKBINDER:   Yes.   And here, just to be

1 clear, um, there is a lot in this exhibit that's in here  
2 because the defense has asked for it, um, and I can  
3 highlight for -- including the first two pages and then  
4 a significant portion of the third page, too, and I can  
5 highlight for the Court what we'd actually be using, but  
6 maybe it makes sense for Mr. McGinty to articulate his  
7 objection. Whatever is easier. The whole thing would  
8 come in as the exhibit, so I guess Mr. McGinty --

9 THE COURT: Is the principal objection that  
10 it's not co-conspirator hearsay or what is it?

11 MR. MCGINTY: It is that it's not  
12 co-conspirator hearsay, your Honor.

13 This is a conversation where a fellow named  
14 MooreR, um, again we're in the same situation where we  
15 don't have any content of who this person is. The  
16 Phillips testimony was that the person who had designed  
17 the software, um, was "L3X," it was not this "MooreR."  
18 The probative offering here, from the government, is  
19 that this is a contribution from MooreR. So there's a  
20 representation -- there's, in effect, a statement here  
21 offered that there's software being provided by MooreR  
22 when the testimony that the government has offered by  
23 Mr. Phillips is to the contrary.

24 THE COURT: I'm sorry. Say that again?

25 MR. MCGINTY: In other words, we're talking

1 here about an application that supposedly is from MooreR  
2 and he's offering it. The testimony of Mr. Phillips was  
3 that it came from some other person.

4 THE COURT: What came from some other person?

5 MR. MCGINTY: The software, your Honor, the,  
6 um, CoaxThief software.

7 THE COURT: All right. So is Exhibit 21 where  
8 MooreR -- is where the defendant refers to MooreR's role  
9 in designing CoaxThief?

10 MR. BOOKBINDER: That's right, your Honor. I  
11 mean -- I think Mr. McGinty may be right, that I, off  
12 the top of my head, remember that Mr. Phillips was  
13 asked, "Who designed CoaxThief?" and then he may have  
14 said it was somebody else. But this chart makes it very  
15 clear. There's no question. There's this back and  
16 forth conversation between the defendant and MooreR and  
17 the defendant talks about how much he likes the sniffer  
18 that MooreR designed.

19 THE COURT: Where is that?

20 MR. BOOKBINDER: That is on Page 3, about the  
21 middle, it's 5:43:08 p.m. MooreR says, "So you'd like"  
22 --

23 THE COURT: I'm sorry. What is it?

24 MR. BOOKBINDER: I'm sorry. It's 543.

25 THE COURT: 5:43.

1 MR. BOOKBINDER: And it may be -- this is also  
2 in our memo, your Honor, if it's easier for you to find  
3 and look at.

4 THE COURT: All right. I've got it.

5 MR. BOOKBINDER: MooreR says, "You like the  
6 sniffer?" Harris says, "It's very well designed. Love  
7 the gooey," which is the interface with the user. And  
8 then Harris goes on to say, "Did you decide on a name  
9 yet?" MooreR says, "No, I've been away, but "CoaxThief  
10 Sniffer" or "Thief" is pretty promising," and then  
11 there's some back and forth dialogue.

12 THE COURT: And where is that?

13 MR. BOOKBINDER: Again, this is just  
14 continuing to read.

15 THE COURT: All right. I see. That's  
16 MooreR's statement. And Harris is asking him how it  
17 works and he said, "Look, the CoaxThief would be a cool  
18 act to put on the website."

19 MR. BOOKBINDER: Yeah. I mean, I think it's  
20 fairly clear from what I've --

21 THE COURT: Yeah, I'm persuaded that there is  
22 a conspiracy by the preponderance of the evidence.  
23 Basically I have the defendant's statements and the chat  
24 logs referencing MooreR's role in designing CoaxThief,  
25 evidence that CoaxThief is MAC-changing software, which

1 I understand the defendant and MooreR are discussing in  
2 the chat logs as being capable of being used to steal  
3 services, to uncap services and, in fact, that's what  
4 they intended to be used for.

5 All right. So that one is admissible. That one  
6 being 21.

7 Then 22, 23 and 24 are posts, right?

8 MR. BOOKBINDER: Correct.

9 THE COURT: Is the government still hoping to  
10 use them?

11 MR. BOOKBINDER: Well, certainly 22, Pages 1  
12 and 2.

13 THE COURT: Which one?

14 MR. BOOKBINDER: Exhibit 22.

15 THE COURT: Okay. This is DerEngel saying,  
16 "I'm checking up on something for a friend. Does  
17 anybody have any verified MAC addresses or any config  
18 files?"

19 MR. BOOKBINDER: Right.

20 THE COURT: Okay, that's admissible.

21 MR. BOOKBINDER: Page 3 is posts by users and  
22 we've talked about this, whether these people are  
23 co-conspirators or not, um, and the first one is a  
24 question --

25 THE COURT: Page what?



1 MR. BOOKBINDER: Page 3 of Exhibit 22.

2 THE COURT: At the moment I want to get -- oh,  
3 I'm sorry, yeah, Exhibit 22? Oh, no, I've got it.  
4 Consider those out.

5 MR. BOOKBINDER: Yes.

6 THE COURT: I mean, the moderator is somebody  
7 other than the defendant. You're not offering them for  
8 the truth. I'd have to give a limiting instruction.  
9 You've got them on a previous page demonstrating that he  
10 has knowledge that MAC addresses are being exchanged.  
11 The marginal probative value of this and the potential  
12 for confusion with a limiting instruction cause 403  
13 problems and I will exclude them.

14 MR. BOOKBINDER: Your Honor, Exhibit 23, we  
15 are withdrawing.

16 THE COURT: Right.

17 MR. BOOKBINDER: And that gets us to 24, which  
18 for some reason -- um, yeah, I think that --

19 THE COURT: 24. Do you have it as -- on Page  
20 2, Post 5 is the defendant?

21 MR. BOOKBINDER: Yeah. I can look at it right  
22 here, your Honor, on the computer. I apologize. For  
23 some reason my copy is missing it.

24 (Looks.)

25 MR. BOOKBINDER: Yes, Page 2 is opposed by the

1 defendant, so obviously we would be seeking to use  
2 that. The remaining portions, I think, are -- the Court  
3 will be -- I'm sorry. Page 5.

4 THE COURT: Okay, let's do this. Page 2 is  
5 in, it's the defendant's own statement. 3 and 4 are  
6 out. They would come in as co-conspirator statements  
7 and that's not proven.

8 MR. BOOKBINDER: Right.

9 THE COURT: Page 5?

10 MR. BOOKBINDER: The defendant's statement  
11 again.

12 THE COURT: The defendant's statement. Do you  
13 want it?

14 MR. BOOKBINDER: I, for now, um, yes, your  
15 Honor, we'll decide whether we're still using that.

16 THE COURT: All right. Well, that comes in.  
17 And I think that's the end of the issues, right?

18 MR. BOOKBINDER: Yes.

19 THE COURT: So you win some, you lose some.

20 MR. BOOKBINDER: Um, your Honor, there's maybe  
21 -- I don't know if there's an objection to Exhibit 28.  
22 There may be.

23 (Pause.)

24 MR. BOOKBINDER: It's a private message  
25 written by Harris, but I don't know if --

1 THE COURT: Yeah, this is where he expresses  
2 his outrage that people were stealing his stuff.

3 MR. BOOKBINDER: Among other things, your  
4 Honor.

5 THE COURT: Well, this is the defendant's own  
6 statement. What's the date? Is it 9-21, 2010?

7 MR. BOOKBINDER: Um, your Honor, I can't tell  
8 right now. I could ask the agent. Whether that's the  
9 download -- whether that's the date that this website  
10 was downloaded or whether that's the date of the post?  
11 I'm not sure. I can find the answer to that.

12 THE COURT: All right. And while you're doing  
13 that --

14 (Pause.)

15 MR. BOOKBINDER: Your Honor, Special Agent  
16 Russell tells me that's the date that he created the  
17 report, that's not the date of the post. At least as  
18 it's set out here, we don't have a date and I would  
19 suggest it doesn't matter given the subject matter of  
20 the post, except that it was before.

21 THE COURT: Well, it depends on whether --  
22 what's that?

23 MR. BOOKBINDER: Your Honor, the, um -- that  
24 given that particularly if it's not admitted in the  
25 context of the conspiracy, to the extent the defendant

1 is making these statements about products that are the  
2 subject of fraud charges, um, I'm not sure that it makes  
3 much of a difference what the date is. We may be able  
4 to find that if that's important.

5 THE COURT: I think the date is -- well,  
6 anyway. Go ahead.

7 MR. MCGINTY: Um, we don't know what the  
8 origin of this was. The assumption is that this came  
9 from the GoDaddy records. Um, I don't know what the  
10 government is --

11 THE COURT: Well, where did it come from?

12 MR. BOOKBINDER: Um, your Honor, if I could  
13 just have a minute again?

14 (Pause.)

15 MR. BOOKBINDER: Your Honor, yes, that did  
16 come from the records that were obtained by the search  
17 warrant at GoDaddy. But I'd suggest, your Honor, that  
18 this isn't a business record, that this is a statement  
19 of the defendant. Mr. Russell can testify certainly as  
20 to how he got it. A search warrant on GoDaddy was  
21 given, their contents relating to this website. And  
22 this was among -- um, you know, Mr. McGinty can  
23 certainly cross-examine and argue that it may have been  
24 altered at some point, but we're not here in --

25 THE COURT: Well, I don't know. I mean, I

1 think the document has to be admissible. The fact that  
2 it was obtained in the search warrant doesn't  
3 necessarily make it admissible.

4 MR. BOOKBINDER: Right.

5 THE COURT: You have to prove that at least --  
6 you have to prove to me, by a preponderance of the  
7 evidence, I think, for Rule 801(d)(2)(A) purposes, that  
8 he made the statement.

9 MR. BOOKBINDER: Yes, your Honor, and we can  
10 do that. Mr. Russell will explain that he has reviewed  
11 -- um, that he has reviewed the records of the private  
12 messages, that the author ID number there, both the  
13 author ID and the user ID are 86, which is listed in the  
14 records as being DerEngel's, Mr. Harris's.

15 THE COURT: Yeah, but this is the same thing,  
16 that unless the records are admissible in some fashion,  
17 then you can't rely on the records.

18 MR. BOOKBINDER: Um, he can also testify, your  
19 Honor, that he reviewed that he did searches for those  
20 user IDs himself and what came back is that every post  
21 related to these user IDs --

22 THE COURT: At the moment this is excluded,  
23 but I'll think about it more.

24 MR. BOOKBINDER: Okay.

25 THE COURT: And then I think the late exhibit

1 was 32.

2 Is there any problem with 32?

3 MR. BOOKBINDER: Um, your Honor, we're not  
4 offering 32. That was something with Motorola.

5 THE COURT: All right. But at the moment, my  
6 thinking about 28, to go back, is, um, you know, the  
7 mere fact that it was obtained in a search warrant, um,  
8 doesn't mean it's not hearsay, and then you have to fit  
9 it into some exception and the exception you want to fit  
10 it into is it's a statement by Harris. If you want this  
11 -- well, sleep on it. If you want it, I'll do a voir  
12 dire of the witness before the jurors come in tomorrow  
13 morning. Okay?

14 MR. BOOKBINDER: We'll think about that, your  
15 Honor.

16 THE COURT: Okay. Another thing. So the  
17 jurors are going to -- we're going to finish with the  
18 jury tomorrow morning, we'll take a break, and I'll  
19 address the Rule 29 motion. But I don't, at the moment  
20 -- I'm not, at the moment, as I told you, inclined to  
21 feel there's sufficient evidence to prove the exact  
22 conspiracy charged in the indictment beyond a reasonable  
23 doubt, using the standards I used in *DiMasi*. There's  
24 enough evidence to prove a narrower conspiracy,  
25 certainly between Lindquist, Phillips and Harris.

1 Mr. T -- well, those three. But I don't think you can  
2 get that one into Massachusetts.

3 And you might want to look at, in terms of  
4 variance, **Mubayid**, 658 F.3d 35 at 48. **Muffleman**, 470  
5 F.3d 33 at 39. And there are other cases.

6 You know, it's possible that there's some theory  
7 on which the conspiracy charge would be saved. It would  
8 invite very complicated instructions and interesting  
9 compelling issues. But the wire fraud, at the moment,  
10 strikes me as a straighter shot. The government should  
11 think about how hard it wants to argue to save the  
12 conspiracy charge. The evidence just -- it happens in  
13 cases, it just doesn't develop the way you expect.

14 MR. BOOKBINDER: Your Honor, whatever the  
15 Court's decision is on the conspiracy at this point,  
16 certainly in light of the issues, um, we want to make  
17 sure that if there is not a conspiracy charge going to  
18 the jury, then there is no **Pinkerton** instruction.

19 THE COURT: Oh, there would not be a **Pinkerton**  
20 instruction.

21 And one of the things I want to talk to you  
22 tomorrow about is, um -- and we haven't researched this  
23 point, but I've had this discussion before, that if we  
24 had a **Pinkerton** charge, you'd have to prove the  
25 conspiracy charged in Count 1, that it's not like

1 co-conspirator hearsay where you'd include some other  
2 conspiracy. Um, that's my view.

3 You should also think about whether you want an  
4 aiding and abetting charge, which the way this has come  
5 in, I expect I'm going to instruct, you know, that if  
6 Mr. Harris is guilty, he's proved beyond a reasonable  
7 doubt to have devised or participated in a scheme, um,  
8 to -- you know, with intent to defraud, um, and/or using  
9 false representations like, I guess, the MAC addresses  
10 -- and I will talk about the MAC addresses, but you've  
11 argued that, and, um, he knew or could reasonably  
12 foresee that the wires would be used in furtherance of  
13 the scheme.

14 So, you know, he's the creator, you're going to  
15 argue, he devised the scheme, um, he wanted to get for  
16 people free internet service, and, you know, even if he  
17 didn't know about Larosa and Madeira, or certainly  
18 Hanshaw, um, he would foresee that people would use, you  
19 know, the devices he distributed as part of the scheme  
20 to steal internet service.

21 And on the aiding and abetting? I mean, it's  
22 always there -- and I use the standard charge that  
23 sometimes you can aid and abet somebody you didn't know,  
24 but again, not having thought this all the way through,  
25 I don't know how you can get a conviction on aiding and



1       abetting and not as a principal. I don't know what --  
2       and on the instructions as I'm inclined to give them  
3       now. But we'll discuss this all tomorrow. It's just  
4       more for you to think about.

5             All right. The Court is in recess.

6                     (Adjourned, 1:30 p.m.)

7

8                             C E R T I F I C A T E

9

10            I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do  
11       hereby certify that the forgoing transcript of the  
12       record is a true and accurate transcription of my  
13       stenographic notes, before Chief Judge Mark L. Wolf, on  
14       Monday, February 27, 2012, to the best of my skill and  
15       ability.

16

17

18

19       /s/ Richard H. Romanow 11-07-12

20       \_\_\_\_\_  
RICHARD H. ROMANOW     Date

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